

1 Julian I. Gurule (CA SBN: 252160)*
2 O'MELVENY & MYERS LLP
3 400 South Hope Street, Suite 1900
4 Los Angeles, California 90071
5 Telephone: (213) 430-6067
6 Email: jgurule@omm.com

HONORABLE WHITMAN L. HOLT

*Admitted *Pro Hac Vice*

Co-Counsel to Debtors and Debtors in Possession

Oren B. Haker (WSBA No. 48725)
Britta E. Warren (WSBA No. 43329)
BLACK HELTERLINE LLP
805 SW Broadway, Suite 1900
Portland, OR 97205
Telephone: (503) 224-5560
Email: oren.haker@bhlaw.com
britta.warren@bhlaw.com

Co-Counsel to Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

ICAP ENTERPRISES, INC., et al.,

Debtors.¹

Chapter 11

Lead Case No. 23-01243-WLH11
Jointly Administered

NOTICE OF FILING REVISED PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING THE SECOND MODIFIED SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION OF ICAP

¹ The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding 1, LLC (23-01265-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01248-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11); Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); iCap Holding 6 LLC (23-01274-11); Colpitts Sunset, LLC (23-01432-11); CS2 Real Estate Development LLC (23-01434-11); and iCap International Investments, LLC (23-01464-11).

NOTICE OF FILING OF REVISED PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING SECOND MODIFIED SECOND AMENDED PLAN OF LIQUIDATION AND REDLINE

BLACK HELTERLINE LLP
805 SW BROADWAY
SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503 224-5560

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ENTERPRISES, INC. AND ITS
AFFILIATED DEBTORS
PROPOSED BY THE DEBTORS
AND OFFICIAL COMMITTEE OF
UNSECURED CREDITORS AND
REDLINE OF THE PROPOSED
CONFIRMATION ORDER

5
6 **PLEASE TAKE NOTICE** that on October 9, 2024, iCap Enterprises, Inc.
7 and its affiliated debtors and debtors in possession (the “Debtors”) and the Official
8 Committee of Unsecured Creditors filed the *Second Modified Second Amended Joint*
9 *Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors*
10 *Proposed by the Debtors and Official Committee of Unsecured Creditors* [ECF No.
11 1360] (as may be further amended, modified, or supplemented, the “Plan”).

12 **PLEASE TAKE NOTICE** that on October 9, 2024, the Debtors filed the
13 *Notice of Filing Proposed Findings of Fact, Conclusions of Law, and Order*
14 *Confirming the Second Modified Second Amended Joint Chapter 11 Plan of*
15 *Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors Proposed by the*
16 *Debtors and Official Committee of Unsecured Creditors* [ECF No. 1364] (the
17 “Proposed Confirmation Order”).

18 **PLEASE TAKE FURTHER NOTICE** that in advance of the hearing to
19 consider confirmation of the Plan, the Debtors hereby file a revised version of the
20 proposed *Findings of Fact, Conclusions of Law, and Order Confirming the Second*
21 *Modified Second Amended Joint Chapter 11 Plan of Liquidation of iCap Enterprises,*
22 *Inc. and its Affiliated Debtors Proposed by the Debtors and Official Committee of*
23 *Unsecured Creditors* (the “Revised Proposed Confirmation Order”), attached hereto
24 as Exhibit 1. A redline showing the changes from the Proposed Confirmation Order
25 to the Revised Proposed Confirmation Order is attached as Exhibit 2.

26
27 **NOTICE OF FILING OF REVISED PROPOSED FINDINGS OF**
28 **FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING**
SECOND MODIFIED SECOND AMENDED PLAN OF
LIQUIDATION AND REDLINE

BLACK HELTERLINE LLP
805 SW BROADWAY
SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503 224-5560

1 DATED this 16th day of October 2024.

2 BLACK HELTERLINE LLP

3
4 By /s/ Oren B. Haker
5 OREN B. HAKER, WSBA No. 48725
6 BRITTA E. WARREN, WSBA No. 43329
7 BLACK HELTERLINE LLP

8
9
10 *Co-Counsel to Debtors and Debtors in*
11 *Possession*

12 And

13
14 JULIAN I. GURULE (Admitted *Pro Hac Vice*)
15 O'MELVENY & MYERS LLP

16
17 *Co-Counsel to Debtors and Debtors in*
18 *Possession*

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27 **NOTICE OF FILING OF REVISED PROPOSED FINDINGS OF**
28 **FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING**
 SECOND MODIFIED SECOND AMENDED PLAN OF
 LIQUIDATION AND REDLINE

BLACK HELTERLINE LLP
805 SW BROADWAY
SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503 224-5560

Exhibit 1

Revised Proposed Confirmation Order

**NOTICE OF FILING OF REVISED PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING
SECOND MODIFIED SECOND AMENDED PLAN OF
LIQUIDATION AND REDLINE**

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805 SW BROADWAY
SUITE 1900
PORTLAND, OR 97205
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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

ICAP ENTERPRISES, INC., *et al.*

Debtors.¹

Chapter 11

Lead Case No. 23-01243-WLH11
Jointly Administered

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER CONFIRMING THE
SECOND MODIFIED SECOND
AMENDED JOINT CHAPTER 11
PLAN OF LIQUIDATION OF ICAP
ENTERPRISES, INC. AND ITS
AFFILIATED DEBTORS
PROPOSED BY THE DEBTORS
AND OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

¹ The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding 1, LLC (23-01256-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01253-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11); Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); iCap Holding 6 LLC (23-01274-11); Colpitts Sunset, LLC (23-01432-11); CS2 Real Estate Development LLC (23-01434-11); and iCap International Investments, LLC (23-01464-11).

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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805 SW BROADWAY
SUITE 1900
PORTLAND, OR 97205
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1 iCap Enterprises, Inc., and its affiliated debtors and debtors in possession
2 (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the
3 “Chapter 11 Cases”), having

- 4 a. commenced, on September 29, 2023 (the “Petition Date”),² the Chapter 11
5 Cases by filing voluntary petitions in the United States Bankruptcy Court
6 for the Eastern District of Washington (the “Bankruptcy Court”) for relief
7 under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-
8 1532 *et seq.* (the “Bankruptcy Code”);
- 9 b. filed, on July 16, 2024, the (i) *Disclosure Statement for the Joint Chapter*
10 *11 Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors*
11 *Proposed by the Debtors and Official Committee of Unsecured Creditors*
12 [ECF No. 1088] and (ii) *Joint Chapter 11 Plan of Liquidation of iCap*
13 *Enterprises, Inc. and its Affiliated Debtors Proposed by the Debtors and*
14 *Official Committee of Unsecured Creditors* [ECF No. 1089];
- 15 c. filed, on July 19, 2024, the *Motion For an Order Approving (I) Proposed*
16 *Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice*
17 *and Objection Procedures for Confirmation of Joint Plan of Liquidation;*
18 *and (IV) Granting Related Relief* [ECF No. 1142];
- 19 d. filed, on August 20, 2024, the (i) *First Amended Disclosure Statement for*
20 *the Joint Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and its*
21 *Affiliated Debtors Proposed by the Debtors and Official Committee of*
22 *Unsecured Creditors* [ECF No. 1221] and (ii) *First Amended Joint*
23 *Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated*

25

26 ² Certain of the Debtors filed their own chapter 11 cases on September 30, November 8, and November 14, 2023. For purposes of this Confirmation Order, “Petition Date” as used herein will refer to the earliest of the Debtors’ respective filing dates and “Chapter 11 Cases” includes all of the Debtors’ cases, irrespective of when they were filed.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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- 1 *Debtors Proposed by the Debtors and Official Committee of Unsecured*
2 *Creditors* [ECF No. 1222];
- 3 e. filed, on August 26, 2024, the (i) *Second Amended Disclosure Statement*
4 *for the Joint Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and*
5 *its Affiliated Debtors Proposed by the Debtors and Official Committee of*
6 *Unsecured Creditors* [ECF No. 1236] and (ii) *Second Amended Joint*
7 *Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated*
8 *Debtors Proposed by the Debtors and Official Committee of Unsecured*
9 *Creditors* [ECF No. 1237];
- 10 f. obtained, on August 29, 2024, the *Order Approving: (I) Proposed*
11 *Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice*
12 *and Objection Procedures for Confirmation of Joint Plan of Liquidation;*
13 *and (IV) Granting Related Relief* [ECF No. 1247] (the “Solicitation
14 Order”), which, among other things (i) approved the Disclosure Statement
15 (as defined below) as having adequate information, as required under
16 section 1125(a) of the Bankruptcy Code, (ii) authorized the Debtors to
17 solicit votes with regard to the acceptance or rejection of the Plan (as
18 defined below), and (iii) approved the Debtors’ related notices, forms, and
19 ballots to be submitted to parties in interest in connection with voting on
20 the Plan and the Debtors’ voting procedures (the “Voting Procedures”);
- 21 g. filed, on August 30, 2024, the *Modified Second Amended Disclosure*
22 *Statement for the Joint Chapter 11 Plan of Liquidation of iCap*
23 *Enterprises, Inc. and its Affiliated Debtors Proposed by the Debtors and*
24 *Official Committee of Unsecured Creditors* [ECF No. 1248] (the
25 “Disclosure Statement”);
- 26

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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BLACK HELTERLINE LLP
805 SW BROADWAY
SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503 224-5560

- 1 h. filed, on August 30, 2024, the *Modified Second Amended Joint Chapter 11*
2 *Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors*
3 *Proposed by the Debtors and Official Committee of Unsecured Creditors*
4 [ECF No. 1249];
- 5 i. caused, on August 29, 2024 and September 4, 2024, the Solicitation Order
6 to be distributed consistent with the Bankruptcy Code, the Federal Rules
7 of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Solicitation
8 Order, as evidenced, by among other things, the *Certificate of Service*
9 [ECF No. 1261] (the “Solicitation Affidavit”) filed by BMC Group, Inc.
10 (“BMC”), the Debtors’ Court-approved noticing, claims, and balloting
11 agent, on September 6, 2024;
- 12 j. caused, on September 4, 2024, the solicitation materials and notice of the
13 deadline for voting on the Plan and objecting to confirmation of the Plan
14 to be distributed consistent with the Bankruptcy Code, the Bankruptcy
15 Rules, and the Solicitation Order, as evidenced, by among other things, the
16 Solicitation Affidavit filed by BMC on September 6, 2024;
- 17 k. caused notice of the hearing to consider confirmation of the Plan (the
18 “Confirmation Hearing”) to be distributed consistent with the Bankruptcy
19 Code, the Bankruptcy Rules, and the Solicitation Order, as evidenced, by
20 among other things, the Solicitation Affidavit filed by BMC, on September
21 6, 2024, and the *Certificate of Service* [ECF No. 1394] filed by BMC, on
22 October 15, 2024;
- 23 l. filed, on September 6, 2024, the *Amended Supplemental Declaration of*
24 *Jeffrey H. Kinrich in Support of the Ponzi Findings and Confirmation of*
25 *the Plan* [ECF No. 1262] (the “Kinrich Declaration”);

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SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503 224-5560

- 1 m. filed, on September 18, 2024, the *Notice of Filing of Plan Supplement*
2 *Pursuant to Modified Second Amended Joint Chapter 11 Plan of*
3 *Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors Proposed*
4 *by the Debtors and Official Committee of Unsecured Creditors* [ECF No.
5 1270] (the “Plan Supplement”);
- 6 n. filed, on October 9, 2024, the *Second Modified Second Amended Joint*
7 *Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated*
8 *Debtors Proposed by the Debtors and Official Committee of Unsecured*
9 *Creditors* [ECF No. 1360] (attached hereto as Exhibit A, and including all
10 exhibits thereto and as the same may be amended, modified, or
11 supplemented from time to time pursuant to the terms thereof, the “Plan”);³
- 12 o. filed, on October 9, 2024, the *Declaration of Brad Daniel of BMC Group*
13 *Regarding Voting and Tabulation of Ballots for Modified Second Amended*
14 *Joint Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and its*
15 *Affiliated Debtors Proposed by the Debtors and Official Committee of*
16 *Unsecured Creditors* [ECF No. 1356] (the “Voting Declaration”);
- 17 p. filed, on October 9, 2024, the *Memorandum of Law (A) In Support of*
18 *Confirmation of the Second Modified Second Amended Joint Chapter 11*
19 *Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors*
20 *Proposed by the Debtors and Official Committee of Unsecured Creditors;*
21 *and (B) In Response to Pending Objections Thereto* [ECF No. 1362] (the
22 “Confirmation Brief”);
- 23
- 24

25 ³ Unless otherwise noted herein, capitalized terms not defined in these findings of fact, conclusions of law, and order
26 (collectively, this “Confirmation Order” or this “Order”) shall have the meanings ascribed to such terms in the Plan. The
rules of interpretation set forth in Article I.B of the Plan apply to this Confirmation Order.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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BLACK HELTERLINE LLP
805 SW BROADWAY
SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503 224-5560

- 1 q. filed, on October 9, 2024, the *Declaration of Lance Miller in Support of*
2 *the Second Modified Second Amended Joint Chapter 11 Plan of*
3 *Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors Proposed*
4 *by the Debtors and Official Committee of Unsecured Creditors* [ECF No.
5 1363] (the “Miller Declaration”);
6 r. filed, on October 9, 2024, the *Notice of Filing Proposed Findings of Fact,*
7 *Conclusions of Law, and Order Confirming the Second Modified Second*
8 *Amended Joint Chapter 11 Plan of Liquidation of iCap Enterprises, Inc.*
9 *and its Affiliated Debtors Proposed by the Debtors and Official Committee*
10 *of Unsecured Creditors* [ECF No. 1364];
11 s. filed, on October 10, 2024, the *Supplemental Declaration of Lance Miller*
12 *in Support of Ponzi Findings and Plan Confirmation* [ECF No. 1370] (the
13 “Miller Ponzi Declaration”);
14 t. filed, on October 10, 2024, the *Declaration of Stanley Ho in Support of the*
15 *Ponzi Findings and Confirmation of the Plan* [ECF No. 1369] (the “Ho
16 Declaration”);
17 u. filed, on October 10, 2024, the *Declaration of Nickisha Haine in Support*
18 *of Ponzi Findings and Plan Confirmation* [ECF No. 1368] (the “Haine
19 Declaration”);
20 v. filed, on October 10, 2024, the *Supplemental Brief Regarding Ponzi*
21 *Findings in Support of Confirmation of Modified Second Amended Joint*
22 *Chapter 11 Plan of Liquidation* [ECF No. 1371] (the “Ponzi Brief”);
23 w. filed, on October 10, 2024, the *Debtors’ Motion for Adverse Inferences*
24 [ECF No. 1366] (the “Adverse Inference Motion”); and
25
26

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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- 1 x. filed, on October 10, 2024, the *Declaration of John T. Bender in Support*
2 *of Debtors' Motion for Adverse Inference* [ECF No. 1367] (the “Bender
3 Declaration”).

4 The Bankruptcy Court having:

- 5 a. set October 16, 2024, at 1:00 p.m. (prevailing Pacific Time) as the date and
6 time for the commencement of the Confirmation Hearing, pursuant to
7 Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129 of the
8 Bankruptcy Code;
- 9 b. reviewed the Disclosure Statement, the Plan, the Plan Supplement, the
10 Confirmation Brief, the Ponzi Brief, the Voting Declaration, the Miller
11 Declaration, the Kinrich Declaration, the Miller Ponzi Declaration, the Ho
12 Declaration, the Haine Declaration, the Adverse Inference Motion, the
13 Bender Declaration, and all pleadings, exhibits, statements, responses, and
14 comments filed in the Chapter 11 Cases regarding confirmation of the Plan
15 (“Confirmation”) and making of the Ponzi Findings (as defined below),
16 including any objections, statements, and reservations of rights filed by
17 parties in interest on the docket of the Chapter 11 Cases;
- 18 c. held the Confirmation Hearing, including hearing the live testimony of
19 Jeffrey H. Kinrich, Stanley Ho, and Nickisha Haine in support of
20 Confirmation and the making of the Ponzi Findings;
- 21 d. heard the statements and arguments made by counsel with respect to
22 approval of the Plan and Ponzi Findings and Confirmation and the
23 objections, if any, thereto;
- 24 e. considered all oral representations, affidavits, testimony, documents,
25 filings, and other evidence regarding the Plan, the Ponzi Findings, and
26 Confirmation and the objections, if any, thereto;

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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- 1 f. overruled any and all objections (to the extent not withdrawn) to the Plan,
2 Confirmation, the Plan Supplement, the Ponzi Findings, and this
3 Confirmation Order and all statements and reservations of rights not
4 consensually resolved or withdrawn, unless otherwise indicated; and
5 g. taken judicial notice of all pleadings and other documents filed, all orders
6 entered, all evidence proffered or adduced, and all arguments presented, in
7 the Chapter 11 Cases.

8 **NOW THEREFORE**, the Bankruptcy Court having found that notice of the
9 Confirmation Hearing and the opportunity for any party in interest to object to the Plan,
10 Confirmation, and the Ponzi Findings having been adequate and appropriate as to all
11 parties affected or to be affected by the Plan and the transactions and settlements
12 contemplated thereby; and the record of the Chapter 11 Cases and the legal and factual
13 bases set forth in the documents filed in support of Confirmation and presented at the
14 Confirmation Hearing including, but not limited to, the Confirmation Brief, the Voting
15 Declaration, the Miller Declaration, the Kinrich Declaration, the Miller Ponzi
16 Declaration, the Ho Declaration, the Haine Declaration, the Ponzi Brief, the Adverse
17 Inference Motion, and the Bender Declaration establish just cause for the relief granted
18 in this Confirmation Order; and after due deliberation thereon and good cause appearing
19 therefor, the Bankruptcy Court hereby makes and issues the following findings of fact,
20 conclusions of law, and order:

21 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

22 **IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED, AND**
23 **ORDERED THAT:**

24 **A. Findings of Fact and Conclusions of Law.**

25 1. The findings of fact and conclusions of law set forth in this Confirmation
26 Order and on the record at the Confirmation Hearing constitute the Bankruptcy Court's

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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1 findings of fact and conclusions of law under Federal Rule of Civil Procedure 52, as
2 made applicable herein by Bankruptcy Rules 7052 and 9014. All findings of fact and
3 conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing in
4 relation to Confirmation and the Ponzi Findings are hereby incorporated into this
5 Confirmation Order to the extent not inconsistent herewith. To the extent any of the
6 following conclusions of law constitute findings of fact, or vice versa, they are adopted
7 as such.

8 **B. Jurisdiction, Venue, and Core Proceeding.**

9 2. The Bankruptcy Court has subject matter jurisdiction over the Chapter 11
10 Cases pursuant to 28 U.S.C. §§ 157 and 1334. The Bankruptcy Court has exclusive
11 jurisdiction to determine whether the Plan complies with the applicable provisions of
12 the Bankruptcy Code and should be confirmed. Venue in the Bankruptcy Court was
13 proper as of the Petition Date and remains proper under 28 U.S.C. §§ 1408 and 1409.
14 Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2), and the
15 Bankruptcy Court may enter a final order consistent with Article III of the Constitution.

16 **C. Eligibility for Relief.**

17 3. The Debtors were and continue to be entities eligible for relief under
18 section 109 of the Bankruptcy Code.

19 4. The Debtors and the Official Committee of Unsecured Creditors appointed
20 in these Chapter 11 Cases (as amended on November 9, 2023 [ECF No. 147], the
21 “Committee” and, together with the Debtors, the “Plan Proponents”) are proper plan
22 proponents under section 1121 of the Bankruptcy Code.

23 **D. Commencement and Joint Administration of the Chapter 11 Cases.**

24 5. On the Petition Date, the Debtors filed voluntary petitions with this
25 Bankruptcy Court for relief under chapter 11 of the Bankruptcy Code. On October 2,
26 2023, the Bankruptcy Court entered an order [ECF No. 9] authorizing the joint

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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1 administration and procedural consolidation of the Chapter 11 Cases under the lead case
2 *In re iCap Enterprises, Inc.*, Case No. 23-01243-WLH11, in accordance with
3 Bankruptcy Rule 1015(b). On November 16, 2023, the Bankruptcy Court granted the
4 motion for the subsequently filed Debtors, Colpitts Sunset, LLC, CS2 Real Estate
5 Development LLC, and iCap International Investments, LLC to be jointly administered
6 under the lead case: *In re iCap Enterprises, Inc.*, Case No. 23-01243-WLH11. See ECF
7 No. 164. Since the Petition Date, the Debtors have operated their business and managed
8 their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the
9 Bankruptcy Code. No request for the appointment of a trustee or examiner has been
10 made in the Chapter 11 Cases.

11 **E. Appointment of the Committee.**

12 6. On October 20, 2023, the Office of the United States Trustee for the
13 Eastern District of Washington (the “U.S. Trustee”) appointed the Committee pursuant
14 to section 1102(a)(1) of the Bankruptcy Code [ECF No. 102] and amended such
15 appointment on October 30, 2023 [ECF No. 112].

16 **F. Judicial Notice.**

17 7. The Bankruptcy Court takes judicial notice of (and deems admitted into
18 evidence for purposes of Confirmation) the docket of the Chapter 11 Cases, including
19 all pleadings and other documents on file, all orders entered, all hearing transcripts, and
20 all evidence and arguments made, proffered, or adduced at the hearings held before the
21 Bankruptcy Court during the pendency of the Chapter 11 Cases, including the hearing
22 to consider the adequacy of the Disclosure Statement and the Confirmation Hearing.

23 **G. Plan Supplement.**

24 8. On September 18, 2024, the Debtors filed the Plan Supplement. The Plan
25 Supplement complies and is consistent with the Bankruptcy Code and the terms of the
26 Plan, and the filing and notice of the Plan Supplement was good and proper and in

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1 accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of the
2 United States Bankruptcy Court for the Eastern District of Washington (the “Local
3 Rules”), the Solicitation Order, and the facts and circumstances of the Chapter 11 Cases.
4 No other or further notice is or will be required with respect to the Plan Supplement.
5 All documents included in the Plan Supplement are integral to, part of, and incorporated
6 by reference into the Plan. All Holders of Claims who voted to accept the Plan and who
7 are conclusively presumed to have accepted the Plan are deemed to have accepted the
8 Plan as modified and supplemented by the Plan Supplement and this Confirmation
9 Order. Subject to the terms of the Plan, the Debtors reserve the right to alter, amend,
10 update, or modify the Plan Supplement before the Effective Date subject to compliance
11 with the Bankruptcy Code and the Bankruptcy Rules, *provided*, that no such alteration,
12 amendment, update, or modification shall be inconsistent with the terms of this
13 Confirmation Order or the terms of the Plan.

14 **H. Transmittal and Mailing of Solicitation Materials; Notice.**

15 9. As evidenced by the Solicitation Affidavit and the Voting Declaration, the
16 Disclosure Statement, the Plan, the Solicitation Order, the ballots for voting on the Plan
17 (the “Ballots”), the notice of the Confirmation Hearing, and the other materials
18 distributed by the Debtors in connection with Confirmation of the Plan (collectively,
19 the “Confirmation Materials”) were transmitted and served in compliance with the
20 Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, the Local Rules, and
21 the procedures set forth in the Solicitation Order.

22 10. Notice of the Confirmation Hearing was appropriate and satisfactory based
23 upon the circumstances of the Chapter 11 Cases. The transmittal and service of the
24 Confirmation Materials complied with the procedures set forth in the Solicitation Order,
25 were appropriate and satisfactory based upon the circumstances of the Chapter 11
26 Cases, were conducted in good faith, and were in compliance with the provisions of the

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1 Bankruptcy Court's orders, the Bankruptcy Code, the Bankruptcy Rules, the Local
2 Rules, and any other applicable rules, laws, and regulations. All parties required to be
3 given notice of the Confirmation Hearing (including the deadline for filing and serving
4 objections to Confirmation of the Plan) were given due, proper, timely, and adequate
5 notice in accordance with the procedures set forth in the Solicitation Order. Because
6 such transmittal and service were adequate and sufficient, no other or further notice is
7 necessary or shall be required.

8 **I. Voting.**

9 11. Prior to the Confirmation Hearing, the Debtors filed the Voting
10 Declaration. As set forth in the Voting Declaration, the procedures used to solicit votes
11 on the Plan and to tabulate the Ballots were fair and conducted in accordance with the
12 Solicitation Order, the Bankruptcy Code, the Bankruptcy Rules, and all other applicable
13 rules, laws, and regulations.

14 12. As set forth in the Plan, Holders of Claims in Classes 3 and 4 (collectively,
15 the “Voting Classes”) were eligible to vote on the Plan pursuant to the Voting
16 Procedures. In addition, Holders of Claims in Classes 1 and 2 are unimpaired and
17 conclusively presumed to have accepted the Plan and, therefore, are not entitled to vote
18 to accept or reject the Plan. Holders of Claims in Class 5 and Holders of Equity Interests
19 in Class 6 (collectively, the “Deemed Rejecting Classes”) are impaired under the Plan
20 and have been deemed to reject the Plan. As evidenced by the Voting Declaration, the
21 statements made on the record at the Confirmation Hearing, and this Confirmation
22 Order, Class 3 and Class 4 have voted to accept the Plan in accordance with section
23 1126(c) of the Bankruptcy Code.

24 **J. Good-Faith Solicitation (11 U.S.C. § 1125(e)).**

25 13. Based on the record before the Bankruptcy Court in the Chapter 11 Cases,
26 the Plan Proponents and each of their respective accountants, agents, assigns, attorneys,

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1 bankers, consultants, directors, employees, executors, financial advisors, investment
2 bankers, managers, members, officers, partners, predecessors, principals, Professional
3 Persons, representatives, and successors of the referenced Person have acted in “good
4 faith” within the meaning of section 1125(e) of the Bankruptcy Code and in compliance
5 with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local
6 Rules, the Solicitation Order, the Voting Procedures, and any other applicable rules,
7 laws, and regulations in connection with all of their respective activities relating to the
8 solicitation of votes on the Plan, their participation in the Chapter 11 Cases, and the
9 activities described in section 1125 of the Bankruptcy Code, and therefore, are entitled
10 to the protections afforded by section 1125(e) of the Bankruptcy Code.

11 **K. Burden of Proof.**

12 14. The Plan Proponents as proponents of the Plan, have met their burden of
13 proving the applicable elements of section 1129(a) and (b) of the Bankruptcy Code by
14 a preponderance of the evidence, which is the applicable evidentiary standard for
15 Confirmation. Further, the Plan Proponents have proven the elements of section 1129(a)
16 and (b) of the Bankruptcy Code by clear and convincing evidence.

17 **L. Bankruptcy Rule 3016.**

18 15. The Plan is dated and identifies the Plan Proponents as the entities
19 submitting it, thereby satisfying Bankruptcy Rule 3016(a). The Plan Proponents
20 appropriately filed the Disclosure Statement and the Plan with the Bankruptcy Court,
21 thereby satisfying Bankruptcy Rule 3016(b). The Plan and Disclosure Statement
22 describe in specific and conspicuous language all acts and actions to be enjoined and
23 identify the Persons that would be subject to injunctions, thereby satisfying Bankruptcy
24 Rule 3016(c).

25

26

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1 **M. Objections.**

2 16. To the extent that any objections (including any reservations of rights) to
3 Confirmation of the Plan or the Ponzi Findings have not been withdrawn, waived, or
4 settled prior to entry of this Confirmation Order, or are not otherwise resolved under
5 this Confirmation Order or as stated by the Debtors and/or the Committee on the record
6 of the Confirmation Hearing, all such objections are overruled on the merits. Any
7 resolutions of objections to entry of this Confirmation Order explained on the record at
8 the Confirmation Hearing are hereby incorporated by reference.

9 **N. Conduct of a Ponzi Scheme.**

10 17. The evidence detailed above demonstrates, and the Bankruptcy Court
11 hereby finds (the “Ponzi Findings”), that (i) beginning no later than October 2018 (the
12 “Ponzi Start Date”) through the conclusion of the prepetition time period analyzed by
13 the CRO and his advisors (which, for the avoidance of doubt, ended prior to the
14 retention of new counsel and financial advisors by the Debtors in July 2023), the
15 principals operated the iCap enterprise as a Ponzi scheme raising approximately \$230
16 million from over 1,800 investors in the United States and abroad; (ii) the Ponzi scheme
17 involved the use of funds provided by new investors to the iCap enterprise to make
18 payments to already-existing investors and other creditors; and (iii) the iCap enterprise
19 did not operate as a legitimate profit-making business. *See In re EPD Inv. Co.*, 114 F.4th
20 1148, 1162–63 (9th Cir. 2024).

21 **O. Modifications or Alterations to the Plan.**

22 18. To the extent the Plan has been modified, supplemented, or altered
23 between solicitation and the date of entry of this Confirmation Order (collectively, the
24 “Modifications”), such Modifications made to the Plan constitute clarifications or
25 technical changes, and do not materially and adversely affect or change the treatment
26 of any Claims against, or Equity Interests in, the Debtors and comply in all respects

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1 with section 1127 of the Bankruptcy Code. All such Modifications are incorporated by
2 reference herein and approved. Accordingly, pursuant to Bankruptcy Rule 3019, such
3 Modifications, if any, do not require (a) additional or further disclosure with respect to
4 the Modifications under section 1125 of the Bankruptcy Code and/or (b) either
5 resolicitation of votes on the Plan or affording Holders of Claims in the Voting Classes
6 the opportunity to change a previously cast Ballot under section 1126 of the Bankruptcy
7 Code.

8 **P. Compliance with the Requirements of Section 1129 of the Bankruptcy**
9 **Code.**

10 19. As detailed below, the Plan complies with all applicable provisions of
11 section 1129 of the Bankruptcy Code.

12 1. **Compliance With Applicable Provisions of the Bankruptcy Code**
13 **(11 U.S.C. § 1129(a)(1)).**

14 20. The Plan complies with all applicable provisions of the Bankruptcy Code,
15 including sections 1122 and 1123, thereby satisfying section 1129(a)(1) of the
16 Bankruptcy Code.

17 (i) **Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)).**

18 21. The classification of Claims and Equity Interests under the Plan is proper
19 under the Bankruptcy Code. Except with respect to Administrative Expense Claims,
20 Priority Tax Claims, and Supplemental DIP Claims, which need not be classified,
21 Article III of the Plan classifies all Claims against, and Equity Interests in, the Debtors
22 into six (6) separate Classes based on the characteristics of those Claims and Equity
23 Interests. Valid business, factual, and legal reasons exist for the separate classification
24 of the various Classes created under the Plan, the classifications were not promulgated
25 for any improper purpose, and the creation of such Classes does not unfairly
26 discriminate between or among Holders of Claims or Equity Interests. Each Class of

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Claims or Equity Interests contains only Claims or Equity Interests that are substantially similar to the other Claims or Equity Interests within that Class. Accordingly, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(ii) Unimpaired Classes (11 U.S.C. § 1123(a)(2)).

22. Article III of the Plan specifies that Claims in Class 1 (Priority Claims) and Class 2 (Secured Claims) are unimpaired under the Plan. Additionally, Administrative Expense Claims, Priority Tax Claims, and Supplemental DIP Claims are not classified under, and are unimpaired by, the Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

(iii) Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).

23. Article III of the Plan specifies that Claims in Class 3 (Investor Claims) and Class 4 (General Unsecured Claims) are impaired and entitled to vote on the Plan, while Claims and Equity Interests in Class 5 (Subordinated Claims) and Class 6 (Equity Interests) are impaired and deemed to reject the Plan. In addition, Article III describes the treatment of the Claims and Equity Interests in such Classes. Accordingly, the Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code.

(iv) No Discrimination (11 U.S.C. § 1123(a)(4)).

24. Article III of the Plan provides for the same treatment of each Claim and Equity Interest in a particular Class, unless the Holder of a particular Claim or Equity Interest agrees to less favorable treatment of such Claim or Equity Interest. Accordingly, the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

(v) Implementation of the Plan (11 U.S.C. § 1123(a)(5)).

25. Article V and various other provisions of the Plan provide in detail adequate and proper means for the Plan's implementation, including, but not limited to, (as more fully described in Article V of the Plan): (a) the authorization to undertake all

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1 corporate actions necessary to effectuate the Plan under Article V.B of the Plan; (b) the
2 dissolution of the Debtors under Article V.B.3 of the Plan; (c) the cancellation of
3 indebtedness under Article V.C of the Plan; (d) the appointment of the iCap Trustees
4 under Article V.D.1 of the Plan; (e) the creation of the iCap Trust under Article V.D.2
5 of the Plan; (f) the vesting of all iCap Trust Assets in the iCap Trust under Article V.D.3
6 of the Plan; (g) the sources of cash for Distributions under the Plan under Article
7 V.D.11; (h) the substantive consolidation of the Debtors as provided in Article V.E of
8 the Plan; (i) the preservation of all Causes of Action and Avoidance Actions under
9 Article V.F of the Plan; (j) the effectuating of exit financing documents and an
10 exemption from registration under the Securities Act under Articles V.D.13, and V.G
11 of the Plan, and (k) the abandonment of certain Estate Assets under Article V.H of the
12 Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(5) of the
13 Bankruptcy Code.

(vi) Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).

15 26. The Debtors are not issuing any non-voting equity securities of any
16 corporation, and each of the Debtors will eventually be dissolved under the Plan.
17 Accordingly, section 1123(a)(6) of the Bankruptcy Code is not applicable to the Plan.

(vii) Designation of Directors and Officers (11 U.S.C. § 1123(a)(7)).

19 27. The Plan provides for the dissolution and winding down of the Debtors'
20 business and appointment of the iCap Trustees as the managers, officers, and
21 representatives of the iCap Trust. Article V.D of the Plan provides for the creation of
22 the iCap Trust and for the appointment of the initial iCap Trustees and the initial iCap
23 Trust Supervisory Board to serve in accordance with the terms of the Plan and the iCap
24 Trust Agreement. The iCap Trustees' shared compensation terms are set forth in Article
25 V.D.1 of the Plan. These designations under the Plan are consistent with the interests of

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Creditors and Holders of Equity Interests and with public policy. Accordingly, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

(viii) Discretionary Contents of the Plan (11 U.S.C. § 1123(b)).

28. The Plan's discretionary provisions comply with section 1123(b) of the Bankruptcy Code and are not inconsistent with the applicable provisions of the Bankruptcy Code.

(a) Impairment/Unimpairment of Classes (11 U.S.C. § 1123(b)(1)).

29. As contemplated by section 1123(b)(1) of the Bankruptcy Code, Article III of the Plan: (i) impairs Investor Claims (Class 3), General Unsecured Claims (Class 4), Subordinated Claims (Class 5), and Equity Interests (Class 6), and (ii) leaves unimpaired Priority Claims (Class 1) and Secured Claims (Class 2).

(b) Rejection of Executory Contracts and Unexpired Leases
(11 U.S.C. § 1123(b)(2)).

30. Any and all executory contracts and unexpired leases of the Debtors shall be deemed rejected by the Debtors pursuant to the provisions of section 365 of the Bankruptcy Code. The Debtors, in rejecting the contracts and leases under the Plan, utilized their sound business judgment and complied with the Bankruptcy Code, as contemplated by section 1123(b)(2) of the Bankruptcy Code.

(c) Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Equity Interests (11 U.S.C. § 1123(b)(3)).

31. Compromise and Settlement. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distributions, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all

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1 claims or controversies resolved pursuant to the Plan and in these Chapter 11 Cases.
2 Such compromise and settlement is fair, equitable, and reasonable and in the best
3 interests of the Debtors, their Estates, creditors, and parties in interest.

4 32. Subordinated Claims. The allowance, classification, and treatment of all
5 Allowed Claims and the respective Distributions and treatments under the Plan take into
6 account and conform to the relative priority and rights of the Claims in each Class in
7 connection with any contractual, legal, and equitable subordination rights relating
8 thereto, whether arising under general principles of equitable subordination, section
9 510(b) of the Bankruptcy Code, or otherwise.

10 33. Release. The releases (the “Release”) of the Debtors; the Committee and
11 its current and former members (in their capacities as such); the CRO; the DIP Parties;
12 and the preceding’s respective accountants, agents, assigns, attorneys, bankers,
13 consultants, directors, employees, executors, financial advisors, investment bankers,
14 managers, members, officers, partners, predecessors, principals, Professional Persons,
15 representatives, and successors of the referenced Person; *provided, however,* that the
16 Debtors’ Related Parties will be limited to the following Persons: the directors, officers,
17 attorneys, accountants, consultants, professionals, and employees who (i) are employed
18 by the Debtors on the Effective Date or (ii) whose employment was approved by the
19 Bankruptcy Court (collectively, the “Released Parties”), are essential and critical
20 provisions of the Plan. The Release, which includes by reference each of the related
21 provisions and definitions contained in the Plan, is (a) within the jurisdiction of the
22 Bankruptcy Court pursuant to 28 U.S.C. § 1334; (b) fully consensual; (c) in exchange
23 for the good and valuable consideration provided by the Released Parties; (d) a good
24 faith settlement and compromise of such claims; (e) in the best interests of the Debtors
25 and their Estates; (f) fair, equitable, and reasonable; (g) given and made after due notice
26

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1 and opportunity for a hearing; and (h) a bar to any of the Releasing Parties asserting any
2 released claim against any of the Released Parties.

3 34. The Release was a necessary inducement to the participation of the
4 Debtors' stakeholders in the negotiations and compromises that led to the Plan.
5 Specifically, the Released Parties, individually and collectively, made significant
6 contributions to the Chapter 11 Cases, including funding the Chapter 11 Cases, and
7 otherwise actively supporting the negotiation and prosecution of the Plan. The Release
8 therefore appropriately offers protection to parties who actively and constructively
9 participated in and contributed to the Debtors' Chapter 11 Cases and without whom
10 Confirmation could not have been achieved.

11 35. The scope of the Release is appropriately tailored under the facts and
12 circumstances of the Chapter 11 Cases, and parties received due and adequate notice of
13 the Release. In light of, among other things, the value provided by the Released Parties
14 to the Debtors' Estates and the critical nature of the Release to the Plan, the Release is
15 approved.

16 36. Exculpation. The exculpation provision set forth in Article X.H of the Plan
17 (the "Exculpation") is approved. The Exculpation is appropriate under applicable law
18 because it was proposed in good faith, was formulated following extensive good faith,
19 arm's length negotiations with key constituents, is a key element of the Plan, and is
20 appropriately limited in scope, as it will have no effect of the liability of any Person or
21 Entity that results from any such act or omission that is determined by a Final Order to
22 have constituted fraud, willful misconduct, gross negligence, or malpractice. The
23 Exculpated Parties have participated in compliance with the applicable provisions of
24 the Bankruptcy Code with regard to the solicitation of, and distributions under, the Plan,
25 and therefore, are not, and on account of such distributions shall not be, liable at any
26 time for the violation of any applicable law, rule, or regulation governing the solicitation

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of acceptances or rejections of the Plan or distributions made pursuant to the Plan. Accordingly, the Exculpation is approved.

37. Injunctions. The injunctive provisions set forth in Articles X.I and X.J of the Plan (collectively, the “Injunctions”) are essential to the Plan and are necessary to implement the Plan and to preserve and enforce the Release and the Exculpation in Article X of the Plan. Such Injunctions are appropriately tailored to achieve those purposes. Accordingly, the Injunctions are approved.

38. Preservation of Estate Causes of Action. The provisions regarding the preservation of all of the Debtors' and Estates' Causes of Action in the Plan, Causes of Action that are Contributed Claims (whether existing as of the Petition Date or thereafter arising), and all Avoidance Actions, including Article V.F of the Plan, are appropriate and are in the best interests of the Debtors, their respective Estates, and their Creditors. Without in any way limiting the iCap Trust's and the iCap Trustees' rights to pursue claims against third parties, Article V.F.3 provides illustrative categories of claims that are preserved under the Plan and will be transferred and conveyed to the iCap Trust as provided for in the Plan and as authorized by this Confirmation Order.

(d) Additional Plan Provisions (11 U.S.C. § 1123(b)(6)).

39. The Plan contains other appropriate provisions that are not inconsistent with the applicable provisions of the Bankruptcy Code, as contemplated by section 1123(b)(6) of the Bankruptcy Code.

2. The Plan Proponents' Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(2)).

40. As detailed below, the Plan Proponents have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code.

- (i) The Debtors and the Committee, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code, as required by section 1129(a)(2) of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, 1126, 1127, 1128, and 1129 of the Bankruptcy Code, the Bankruptcy Rules, including Bankruptcy Rules 3016, 3017, 3018, and 3019, the Local Rules, the Solicitation Order, and any applicable nonbankruptcy laws, rules, and regulations in transmitting the Disclosure Statement, the Plan, the Plan Supplement, and any related documents and notices.
 - (ii) The votes to accept or reject the Plan were solicited by the Plan Proponents and their agents after the Bankruptcy Court approved the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code and entered the Solicitation Order.
 - (iii) The Plan Proponents and their agents (a) have solicited and tabulated votes on the Plan and have participated in the activities described in section 1125 of the Bankruptcy Code fairly and in good faith within the meaning of section 1125(e) of the Bankruptcy Code, and in a manner consistent with the applicable provisions of the Solicitation Order, the Disclosure Statement, the Plan, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws, and regulations, and (b) are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the Exculpation provision set forth in Article X.H of the Plan.
 - (iv) The Plan Proponents and their agents and professionals have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the offering, issuance, and distribution of recoveries under the Plan and, therefore, are not, and on account of such distributions will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or distributions made thereunder, so long as such distributions are made consistent with and pursuant to the Plan.

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1 **3. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)).**

2 41. The Plan (including all documents and agreements necessary to effectuate
3 the Plan) and the transactions and settlements contemplated in the Plan have been
4 proposed in good faith and not by any means forbidden by law, with the legitimate and
5 honest purpose of maximizing recoveries to parties in interest. In determining that the
6 Plan has been proposed in good faith, the Bankruptcy Court has examined the totality
7 of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself, and
8 the process leading to its formulation. The Plan Proponents' good faith is evident from
9 the facts and record of the Chapter 11 Cases, the Disclosure Statement, the Plan, the
10 record of the Confirmation Hearing, the Miller Declaration, and all other proceedings
11 held in the Chapter 11 Cases. The Plan is the product of arm's length negotiations
12 between the Debtors, the Committee, and other parties in interest. The Plan itself and
13 the process leading to its formulation provide independent evidence of the Debtors'
14 good faith, serve the public interest, and assure fair treatment of Holders of Claims and
15 Equity Interests. Consistent with the overriding purpose of chapter 11, the Debtors
16 commenced the Chapter 11 Cases, and proposed the Plan, with the legitimate purpose
17 of maximizing the value of the ultimate recoveries to all creditor groups on a fair and
18 equitable basis. The Plan's classification, indemnification, exculpation, release, and
19 injunction provisions were negotiated in good faith and at arm's length, are consistent
20 with sections 105, 1122, 1123, 1129, and 1142 of the Bankruptcy Code, and are each
21 necessary for implementation of the Plan.

22 42. The Plan Proponents and each of the constituents who negotiated the Plan,
23 including, but not limited to, each of their respective accountants, agents, assigns,
24 attorneys, bankers, consultants, directors, employees, executors, financial advisors,
25 investment bankers, managers, members, officers, partners, predecessors, principals,
26 Professional Persons, representatives, and successors of the referenced Person (a) acted

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1 in good faith in negotiating, formulating, and proposing the Plan and the agreements,
2 compromises, settlements, transactions, transfers, and documentation contemplated by
3 the Plan and (b) will be acting in good faith in proceeding to (i) consummate the Plan
4 and the agreements, compromises, settlements, transactions, transfers, and
5 documentation contemplated by the Plan and this Confirmation Order and (ii) take any
6 actions authorized and directed or contemplated by this Confirmation Order.
7 Accordingly, the Plan satisfies section 1129(a)(3) of the Bankruptcy Code.

8 **4. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

9 43. The procedures set forth in the Plan for the Bankruptcy Court's review and
10 ultimate determination of the fees, costs, and expenses to be paid by the Debtors, or the
11 iCap Trustees, as applicable, in connection with the Chapter 11 Cases, or in connection
12 with the Plan and incident to the Chapter 11 Cases, satisfy the objectives of, and are in
13 compliance with, section 1129(a)(4) of the Bankruptcy Code.

14 **5. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).**

15 44. Article V.B.2 of the Plan satisfies the requirements of section 1129(a)(5)
16 of the Bankruptcy Code because the Debtors have disclosed that, on the Effective Date,
17 each of the Debtors' existing directors and officers including, without limitation, the
18 CRO, shall be terminated automatically without the need for any further action and
19 without the need for any corporate or limited liability company filings, and they shall
20 have no ongoing rights against or obligations to the Debtors or the Estates, including
21 under any applicable prepetition agreements (all of which will be deemed terminated);
22 *provided, however,* that the Debtors' indemnification and defense obligations under any
23 such agreements shall survive the foregoing termination and remain unaltered by the
24 Plan. On the Effective Date, the iCap Trustees shall succeed to all such powers as would
25 have been applicable to the Debtors' officers and directors in respect of all iCap Trust
26 Assets. The Debtors have also disclosed that the CRO, Lance Miller, and Seth Freeman

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1 will serve as the initial iCap Trustees and the nature of their compensation for their role
2 as the iCap Trustees. The appointment of the iCap Trustees was, is, and will be
3 consistent with the interests of Holders of Claims and Equity Interests and public policy.
4 Accordingly, the Plan satisfies the requirements of section 1129(a)(5) of the Bankruptcy
5 Code.

6 **6. No Rate Changes (11 U.S.C. § 1129(a)(6)).**

7 45. The Plan proposes no rate change subject to the jurisdiction of any
8 governmental regulatory commission. Thus, section 1129(a)(6) of the Bankruptcy Code
9 is not applicable.

10 **7. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).**

11 46. The Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy
12 Code. The evidence in support of the Plan that was proffered or adduced at the
13 Confirmation Hearing, including the Miller Declaration, the liquidation analysis
14 attached to the Disclosure Statement as Exhibit B, the recovery analysis attached to the
15 Disclosure Statement as Exhibit C, and the facts and circumstances of the Chapter 11
16 Cases: (a) is reasonable, persuasive, credible, and accurate as of the dates such evidence
17 was prepared, presented, or proffered; (b) utilizes reasonable and appropriate
18 methodologies and assumptions; (c) has not been controverted by other evidence;
19 (d) provides a reasonable estimate of the liquidation values of the Debtors upon
20 hypothetical conversion to cases under chapter 7 of the Bankruptcy Code; and (e)
21 establishes that Holders of Allowed Claims or Equity Interests will recover at least as
22 much under the Plan on account of such Claim or Equity Interest, as of the Effective
23 Date, as such Holder would receive if the Debtors were liquidated, on the Effective
24 Date, under chapter 7 of the Bankruptcy Code.

25

26

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1 **8. Acceptance of the Plan by Certain Classes (11 U.S.C. § 1129(a)(8)).**

2 47. Classes 1 and 2 are each Classes of unimpaired Claims that are
3 conclusively presumed to have accepted the Plan under section 1126(f) of the
4 Bankruptcy Code. As set forth in the Voting Declaration, Classes 3 and 4 have voted to
5 accept the Plan in accordance with section 1126(c) of the Bankruptcy Code. The
6 Deemed Rejecting Classes are deemed to have rejected the Plan pursuant to section
7 1126(g) of the Bankruptcy Code. Although section 1129(a)(8) of the Bankruptcy Code
8 is not satisfied with respect to the Deemed Rejecting Classes, the Plan may nevertheless
9 be confirmed because the Plan satisfies section 1129(b) of the Bankruptcy Code with
10 respect to such Classes.

11 **9. Treatment of Claims Entitled to Priority Under Section 507(a) of the**
12 **Bankruptcy Code (11 U.S.C. § 1129(a)(9)).**

13 48. The treatment of Administrative Expense Claims and Priority Tax Claims
14 under Article III.A the Plan, and of Priority Claims under Article III.B.1 of the Plan,
15 satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of
16 the Bankruptcy Code. Notwithstanding anything to the contrary set forth in the Plan,
17 the Debtors agree that any reference to consent to treatment that differs from the
18 treatment permitted by section 1129(a)(9) of the Bankruptcy Code shall require actual
19 consent and failure to object to Confirmation of the Plan shall not be deemed to be
20 consent to receive treatment by a Holder of a Claim other than as provided for under
21 section 1129(a)(9) of the Bankruptcy Code.

22 **10. Acceptance of the Plan by at Least One Impaired Class**
23 **(11. U.S.C. § 1129(a)(10)).**

24 49. All Voting Classes are impaired and, as indicated in the Voting Declaration
25 and this Confirmation Order, Classes 3 and 4 have voted to accept the Plan by the
26 requisite number and amount of Claims, determined without including any acceptance

1 of the Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy
2 Code). Accordingly, the Plan satisfies the requirements of section 1129(a)(10) of the
3 Bankruptcy Code.

4 **11. Feasibility (11 U.S.C. § 1129(a)(11)).**

5 50. The Plan proposes a liquidation of all Estate Assets and the distribution of
6 Cash and/or iCap Trust Interests to Holders of Allowed Claims in accordance with the
7 priority scheme of the Bankruptcy Code and the terms of the Plan, thereby satisfying
8 section 1129(a)(11) of the Bankruptcy Code.

9 **12. Payment of Bankruptcy Fees (11 U.S.C. § 1129(a)(12)).**

10 51. The Plan requires that all fees payable by the Debtors pursuant to section
11 1930 of title 28 of the United States Code have been paid or will be paid, thereby
12 satisfying section 1129(a)(12) of the Bankruptcy Code.

13 **13. Non-Applicability of Certain Bankruptcy Code Sections**
14 **(11 U.S.C. §§ 1129(a)(13), (14), (15), and (16)).**

15 52. The Debtors (a) do not provide or pay any “retiree benefits,” as such term
16 is defined in section 1114 of the Bankruptcy Code, (b) are not obligated to pay any
17 domestic support obligations, (c) are not individuals, are (d) are not a corporation or
18 trust that is not a moneyed, business, or commercial corporation or trust. Sections
19 1129(a)(13), 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code are,
20 therefore, inapplicable to the Chapter 11 Cases.

21 **14. Confirmation of the Plan Over Non-Acceptance of Impaired Classes.**
22 **(11 U.S.C. § 1129(b)).**

23 53. The Plan satisfies the requirements of section 1129(b) of the Bankruptcy
24 Code. Notwithstanding the fact that the Deemed Rejecting Classes have not accepted
25 the Plan, the Plan may be confirmed because the evidence proffered or adduced at the
26 Confirmation Hearing (a) is reasonable, persuasive, credible, and accurate as of the

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1 dates such evidence was prepared, presented, or proffered, (b) utilizes reasonable and
2 appropriate methodologies and assumptions, (c) has not been controverted by other
3 evidence, and (d) establishes that the Plan does not discriminate unfairly, and is fair and
4 equitable, with respect to Classes 5 and 6, as required by sections 1129(b)(1) and (b)(2)
5 of the Bankruptcy Code, because (i) no Class of Claims or Equity Interests that is junior
6 to the Claims and Equity Interests in Classes 5 and 6 will receive distributions or retain
7 any property under the Plan on account of such junior Claim or Equity Interest and
8 (ii) the Claims and Equity Interests in Classes 5 and 6 are “dissimilar” from the Claims
9 and Equity Interests in all other Classes and the Plan does not provide any distributions
10 to similarly situated Holders of Claims or Equity Interests.

11 **15. Only One Plan (11 U.S.C. § 1129(c)).**

12 54. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy
13 Code. The Plan (including previous versions thereof) is the only chapter 11 plan filed
14 in the Chapter 11 Cases.

15 **16. Principal Purpose of the Plan (11 U.S.C. § 1129(d)).**

16 55. The Plan satisfies the requirements of section 1129(d) of the Bankruptcy
17 Code. The principal purpose of the Plan is not the avoidance of taxes or the avoidance
18 of the application of section 5 of the Securities Act of 1933, and there has been no filing
19 by any governmental agency asserting such avoidance.

20 **17. Small Business Case (11 U.S.C. § 1129(e)).**

21 56. The Chapter 11 Cases are not a “small business case,” as that term is
22 defined in the Bankruptcy Code, and, accordingly, section 1129(e) of the Bankruptcy
23 Code is not applicable.

24 **Q. Satisfaction of Confirmation Requirements.**

25 57. Based upon the foregoing, the Plan Proponents have met their burden of
26 proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a

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1 preponderance of the evidence, the Plan satisfies all the requirements for Confirmation
2 set forth in section 1129 of the Bankruptcy Code, and the Plan should be confirmed.

3 **R. Substantive Consolidation.**

4 58. All of the Debtors, other than the Excluded Debtors with respect to Claims
5 in Classes 2B and 2C, shall be substantively consolidated pursuant to sections 105(a),
6 541, 1123, and 1129 of the Bankruptcy Code, as set forth in the Plan, and such
7 substantive consolidation is fair, equitable, reasonable and in the best interests of the
8 Debtors, their Estates and the Holders of Claims and Equity Interests. Although
9 Creditors generally may not have treated all of the Debtors as one legal entity, there is
10 substantial commingling of assets and liabilities among the Debtors. *See In re Bonham*,
11 229 F.3d 750, 764-65 (9th Cir. 2000). It is impossible to trace the flow of funds with
12 respect to the Debtors' prepetition transactions since the majority of the proceeds
13 received were commingled and distributed without regard to corporate formalities,
14 which entanglement warrants substantive consolidation of all the Debtors. Moreover,
15 the Chapter 11 Cases are unique—the perpetration of a fraudulent scheme by a common
16 corporate enterprise, one that in the process did not keep accurate records of the
17 multitude of intercompany transactions that have occurred, making an unscrambling of
18 the enterprise's accounts impossible—but that has justified substantive consolidation in
19 other cases. *See, e.g., In re Bonham*, 229 F.3d at 764-65 (consolidating entities in Ponzi
20 scheme case); *In re DBSI, Inc.*, Case No. 08-12687, ECF No. 5924 (Bankr. D. Del. Jan.
21 19, 2010) (same); *In re Bernard L. Madoff Investment Securities LLC*, No. 08-01789,
22 ECF No. 252 (Bankr. S.D.N.Y. June 10, 2009) (same). Substantive consolidation results
23 in equitable treatment to all creditors and was not used to disadvantage a particular
24 creditor group. Accordingly, the requirements of substantive consolidation are satisfied
25 and the substantive consolidation of the Debtors, other than the Excluded Debtors with
26 respect to Claims in Classes 2B and 2C, in accordance with the Plan is hereby approved.

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1 See *In re Bonham*, 229 F.3d at 764-65; *In re Owens Corning*, 419 F.3d 195 (3d Cir.
2 2005).

3 **S. Disclosure of Facts.**

4 59. The Debtors have disclosed all material facts, to the extent applicable,
5 regarding the Plan and the adoption, execution, and implementation of the other matters
6 provided for under the Plan, including, without limitation, (a) the establishment of the
7 iCap Trust and the execution and entry into the iCap Trust Agreement; (b) the identity
8 of the iCap Trustees and their proposed compensation; (c) the adoption and making of
9 the Ponzi Findings; (d) the method and manner of Distributions under the Plan; (e) the
10 winding down of the Debtors' business and dissolution of the Debtors; (f) the exemption
11 under section 1146(a) of the Bankruptcy Code; (g) the Releases, Exculpation,
12 Injunctions, and preservation of Debtors' or Estates' Causes of Action and Avoidance
13 Actions; and (h) the adoption, execution, and delivery of all contracts, leases,
14 instruments, releases, and other agreements related to any of the foregoing.

15 **T. iCap Trust Agreement.**

16 60. The iCap Trust Agreement, and the iCap Trust to which it relates, are,
17 individually and collectively, essential elements of the Plan, and entry into the iCap
18 Trust Agreement is in the best interests of the Debtors, their Estates, and the Holders of
19 Claims and Equity Interests and is necessary and appropriate for consummation of the
20 Plan. The Debtors have exercised sound business judgment in determining to enter into
21 the iCap Trust Agreement and have provided adequate notice thereof. The terms of the
22 iCap Trust Agreement set forth in the Plan Supplement have been negotiated in good
23 faith and at arm's length among the Debtors and the Committee and are deemed to have
24 been made in good faith and for legitimate business purposes. The terms and conditions
25 of the iCap Trust Agreement set forth in the Plan Supplement are fair and reasonable
26 and are approved.

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1 **U. Exit Financing.**

2 61. The terms and conditions of the Exit Financing (which term, for the
3 avoidance of doubt, shall include the (1) Exit Loan and Security Agreement with Keith
4 Holdings LLC and iCap DIP Finance Group LLC, which contemplates a commitment
5 fee of \$150,000.00 to be paid by the iCap Trust upon approval of the Exit Financing;
6 (2) Exit Loan and Security Agreement with Redmond Funding Group, LLC; and
7 (3) Exit Loan and Security Agreement with Tritalent Funding Group, LLC
8 (collectively, the “Exit Financing Documents”)) and all of the transaction documents
9 governing the Exit Financing and the fees to be paid thereunder (a) are fair and
10 reasonable, (b) reflect the Debtors’ exercise of prudent judgment, (c) are supported by
11 reasonably equivalent value and fair consideration, (c) are proposed in good faith, (d)
12 are critical to the success and feasibility of the Plan, (e) are in the best interests of the
13 Debtors, their Estates, and their Creditors, and (f) were negotiated in good faith, without
14 fraud or collusion and at arm’s length among the parties, without the intent to hinder,
15 delay, or defraud any Creditor of the Debtors.

16 **V. Likelihood of Satisfaction of Conditions Precedent to the Effective Date.**

17 62. Without limiting or modifying the rights of the Debtors, each of the
18 conditions precedent to the Effective Date, as set forth in Article IX.A of the Plan, has
19 been or is reasonably likely to be satisfied or waived in accordance with Article IX.B
20 of the Plan.

21 **W. Implementation.**

22 63. All documents necessary to implement the Plan, including those contained
23 in the Plan Supplement, and all other relevant and necessary documents (including,
24 without limitation, the iCap Trust Agreement and any documents and agreements with
25 respect to the Exit Financing) have been negotiated in good faith and at arm’s length,
26 are in the best interests of the Debtors, and shall, upon completion of documentation

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1 and execution, and in accordance with the terms and conditions thereof, be valid,
2 binding, and enforceable documents and agreements not in conflict with any federal,
3 state, or local law. The Debtors have exercised reasonable business judgment in
4 determining which agreements to enter into and have provided sufficient and adequate
5 notice of such documents and agreements. The terms and conditions of such documents
6 and agreements have been and are continuing to be negotiated in good faith, at arm's
7 length, are fair and reasonable, and are approved. The Debtors are authorized, without
8 any further notice to or action, order, or approval of the Bankruptcy Court to finalize
9 and execute and deliver all agreements, documents, instruments, and certificates
10 relating thereto and perform their obligations thereunder in accordance with the Plan.

11 **X. Retention of Jurisdiction.**

12 64. Pursuant to sections 105(c) and 1142 of the Bankruptcy Code, and
13 notwithstanding the entry of this Confirmation Order or the occurrence of the Effective
14 Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising
15 out of, and related to, the Plan, this Confirmation Order, and the Chapter 11 Cases, to
16 the fullest extent permitted by law, as set forth in Article XIII of the Plan.

17 **Y. Waiver of Stay.**

18 65. Given the facts and circumstances of the Chapter 11 Cases, it is appropriate
19 that the 14-day stay imposed by Bankruptcy Rules 3020(e) and 7062(a) be waived.

20 **ORDER**

21 **BASED ON THE FOREGOING FINDINGS OF FACTS AND
22 CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND
23 DECREED, THAT:**

24 **A. Approval of the Plan.**

25 66. The Plan, attached hereto as Exhibit A, is approved in its entirety and
26 confirmed under section 1129 of the Bankruptcy Code. The terms of the Plan, including

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1 the Plan Supplement, are incorporated by reference into and are an integral part of this
2 Confirmation Order (whether or not such terms are expressly referenced or described
3 herein). The documents contained in the Plan Supplement, and any amendments,
4 modifications, and supplements thereto, and all documents and agreements related
5 thereto (including all exhibits and attachments thereto), and the execution, delivery, and
6 performance thereof, are authorized and approved as finalized, executed, and delivered.
7 The failure to include or refer to any particular article, section, or provision of the Plan,
8 the Plan Supplement, or any related document or exhibit does not impair the
9 effectiveness of that article, section, or provision; it being the intent of the Bankruptcy
10 Court that the Plan, the Plan Supplement, and any related document or exhibit are
11 approved and confirmed in their entirety. The terms of the Plan, the Plan Supplement,
12 all exhibits thereto, and all other relevant and necessary documents shall be effective
13 and binding as of the Effective Date.

14 **B. Objections.**

15 67. To the extent that any objections (including any reservation of rights) to
16 Confirmation have not been withdrawn, waived, or settled prior to entry of this
17 Confirmation Order, or otherwise resolved as stated by the Debtors on the record of the
18 Confirmation Hearing, all such objections are denied and overruled on the merits and
19 in their entirety.

20 **C. Approval of Plan Modifications.**

21 68. The Modifications are approved in all respects pursuant to sections 1125
22 and 1127 of the Bankruptcy Code and Bankruptcy Rule 3019(a). The Plan (as modified
23 by this Confirmation Order) is deemed accepted by all Holders of Claims that voted to
24 accept or were deemed to have accepted any prior iteration of the Plan, and no other or
25 further disclosure or solicitation of votes is required. For the avoidance of doubt, all
26 references to the Plan herein shall mean the Plan as modified by the Modifications.

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1 **D. Amendment of the Plan.**

2 69. Subject to the requirements of section 1127 of the Bankruptcy Code,
3 Bankruptcy Rule 3019, and, to the extent applicable, sections 1122, 1123, and 1125 of
4 the Bankruptcy Code, the Debtors may alter, amend, or modify the Plan at any time
5 prior to the Effective Date. Holders of Claims that have accepted the Plan shall be
6 deemed to have accepted the Plan, as altered, amended, or modified, if the proposed
7 alteration, amendment, or modification complies with the requirements of this
8 paragraph 69 and Article XII of the Plan, and does not materially and adversely change
9 the treatment of the Claim of such Holder; *provided, however,* that any Holders of
10 Claims that were deemed to have accepted the Plan because such Claims were
11 unimpaired shall continue to be deemed to have accepted the Plan only if, after giving
12 effect to such amendment or modification, such Claims continue to be unimpaired.

13 **E. Plan Classification.**

14 70. The Plan's classification scheme is approved. The terms of the Plan shall
15 solely govern the classification of Claims and Equity Interests for purposes of the
16 distributions to be made thereunder. The classifications set forth on the Ballots tendered
17 to or returned by the Holders of Claims in connection with voting on the Plan: (a) were
18 set forth thereon solely for purposes of voting to accept or reject the Plan; (b) do not
19 necessarily represent, and in no event shall be deemed to modify or otherwise affect,
20 the actual classification of Claims under the Plan for distribution purposes; (c) may not
21 be relied upon by any Holder of a Claim as representing the actual classification of such
22 Claim under the Plan for distribution purposes; and (d) shall not be binding on the
23 Debtors or the iCap Trust except for voting purposes.

24 **F. Information Requests to Investors.**

25 71. Upon request, Investors must, within twenty-one (21) calendar days of
26 receipt of such request, respond to requests for information by the iCap Trustees with

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1 respect to Investor Claims. Failure to respond to a request for information may subject
2 the Investor's Claim to disallowance in the iCap Trustees' full discretion, subject to the
3 following:

- 4 a. Any request to an Investor for information pursuant to this
5 paragraph shall include a clear statement that failure to provide the
6 information may subject the Investor's Claim to disallowance in the
7 iCap Trustees' full discretion;
- 8 b. The iCap Trustees may provide additional time to respond, if
9 reasonably necessary and requested within the twenty-one (21) day
10 period;
- 11 c. An Investor shall have the right to seek Bankruptcy Court
12 determination on the reasonableness of the information requested;
13 *provided, however,* that in the event the court determines that the
14 request is reasonable, the Investor's Claim shall be subject to
15 reduction in an amount sufficient (as determined by the iCap
16 Trustees) to recover attorneys fees and costs incurred by the iCap
17 Trust in addressing the request for determination;
- 18 d. If a timely determination is requested, the Investor shall not be
19 subject to forfeiture of the Investor's Claim until a resolution by the
20 Bankruptcy Court and a reasonable amount of time to comply with
21 the determination of the Bankruptcy Court; and
- 22 e. Any Personally Identifiable Information, as that term is defined in
23 section 101(41A) of the Bankruptcy Code, provided by an Investor
24 to the iCap Trust shall be safeguarded and held confidential in
25 accordance with reasonable commercial standards.

26

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1 **G. Claims Paid by Third Parties.**

2 72. Except as otherwise set forth herein or in the Plan, and specifically Article
3 III.C.2.a of the Plan, governing payments received by an Investor on account of
4 Individual Investor-Specific Claims, to the extent a Holder of a Claim receives a
5 Distribution on account of such Claim under the Plan and receives payment from a party
6 that is not a Debtor or the iCap Trustees on account of such Claim, such Holder shall,
7 within thirty (30) days of receipt thereof, repay or return the Distribution to the
8 applicable Debtor or the iCap Trustees, to the extent the Holder's total recovery on
9 account of such Claim from the third party and under the Plan exceeds the amount of
10 such Claim as of the date of any such Distribution under the Plan. The failure of such
11 Holder to timely repay or return such excess Distribution shall result in the Holder
12 owing the iCap Trust annualized interest at the Federal Judgment Rate, as in effect as
13 of the Petition Date, on such amount owed for each Business Day after the thirty-day
14 grace period specified above until the amount is repaid. For the avoidance of doubt,
15 only prior distributions are required to be returned or paid to the iCap Trust, and no
16 forfeiture of an Investor's Claim shall result unless the Investor fails to comply with
17 Article III.C.2.a of the Plan.

18 **H. Comprehensive Settlement of Claims and Controversies.**

19 73. Pursuant to sections 1123(a)(5), 1123(b)(3), and 1123(b)(6) of the
20 Bankruptcy Code, as well as Bankruptcy Rule 9019, and in consideration for the
21 Distributions and other benefits provided under the Plan, the provisions of the Plan will
22 constitute a good faith compromise and settlement of all claims and controversies
23 relating to the rights that a Holder of a Claim or an Equity Interest may have against
24 any Debtor with respect to any Claim, Equity Interest, or any Distribution on account
25 thereof, as well as of all potential Intercompany Claims, Intercompany Liens, and
26 Causes of Action against any Debtor. The entry of this Confirmation Order will

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1 constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise
2 or settlement of all such claims or controversies and the Bankruptcy Court's finding
3 that all such compromises or settlements are (i) in the best interest of the Debtors, the
4 Estates, and their respective property and stakeholders; and (ii) fair, equitable, and
5 reasonable.

6 74. The entry of this Confirmation Order constitutes Ponzi Findings that (i)
7 beginning no later than the Ponzi Start Date through the conclusion of the prepetition
8 time period analyzed by the CRO and his advisors (which, for the avoidance of doubt,
9 ended prior to the retention of new counsel and financial advisors by the Debtors in July
10 2023), the iCap enterprise operated as a Ponzi scheme raising approximately \$230
11 million from over 1,800 investors in the United States and abroad; and (ii) the Ponzi
12 scheme involved the payment of purported returns to existing investors from funds
13 contributed by new investors. The Ponzi Findings are not binding on any other court or
14 governmental or regulatory authority. The Ponzi Findings contained in this
15 Confirmation Order constitute and satisfy the Ponzi finding condition set forth in the
16 Exit Financing.

17 75. Any Ponzi Finding by the Bankruptcy Court, including any finding of a
18 Ponzi scheme or a Ponzi Start Date, shall not be preclusive nor binding on Umpqua
19 Bank in any other court or governmental or regulatory authority, and neither the
20 Debtors, the Committee, the iCap Trust, nor the iCap Trustees will seek to enforce the
21 same against Umpqua Bank in this Bankruptcy Court. In addition, to the extent the
22 Debtors are substantively consolidated as of the Effective Date, such substantive
23 consolidation shall not affect or diminish any defenses or rights of Umpqua Bank with
24 respect to any claims associated with the Debtors or any individual Debtor, including
25 any deposit accounts held by a Debtor at Umpqua Bank. The Plan Proponents
26 acknowledge and agree that: Umpqua Bank is not a Creditor or party to this proceeding,

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1 that Umpqua Bank has not had a full or fair opportunity to litigate any Ponzi Findings
2 to a final order or judgment, and that no claims have been specifically asserted against
3 Umpqua Bank, or otherwise adjudicated in any manner in relation to the Plan or through
4 Confirmation of the Plan.

5 76. In accordance with the terms of the *Stipulation Resolving Christopher*
6 *Christensen's Objection to Confirmation of the Plan* [ECF No. 1266] (the "Christensen
7 Stipulation"), any finding of fact or conclusion of law by the Bankruptcy Court or any
8 appellate court in connection with the confirmation of the Plan relating to any finding
9 of a Ponzi scheme, a Ponzi start date, or any fraud or misconduct by or on behalf of the
10 Debtors or Christensen shall have no preclusive effect on Christensen and shall not be
11 binding on Christensen in any future litigation or proceeding against Christensen in any
12 tribunal. Neither the Debtors, the Committee, the iCap Trust, nor the iCap Trustees will
13 pursue any action in the Bankruptcy Court against Christensen, nor seek to enforce any
14 such findings against Christensen or contend that Christensen is bound by any such
15 findings; *provided* that, in the event Christensen files a motion or complaint in the
16 Bankruptcy Court asserting a monetary claim or seeking affirmative recovery of funds
17 from the Debtors' Estates or the iCap Trust based on any activity that occurred before
18 the date of the Christensen Stipulation, the Debtors, the Committee, the iCap Trust, or
19 the iCap Trustees (as applicable) will be permitted to respond to such action and seek
20 to enforce the findings.

21 77. In accordance with the *Stipulation Resolving Wilmington's Objection to*
22 *Confirmation of the Plan* [ECF No. 1338], any finding of fact or conclusion of law by
23 the Bankruptcy Court or any appellate court in connection with the confirmation of the
24 Plan relating to any finding of a Ponzi scheme (inclusive of the Ponzi Finding), a Ponzi
25 start date, any fraud or misconduct by or on behalf of the Debtors, or any element of
26 any claim or cause of action asserted against Wilmington, shall have no preclusive

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1 effect on Wilmington and shall not be binding on Wilmington in any future litigation
2 or proceeding against Wilmington in any tribunal (including the pending Wilmington
3 Adversary Proceeding). Neither the Debtors, the Committee, the iCap Trust, nor the
4 iCap Trustees will seek to enforce any such findings against Wilmington or contend
5 that Wilmington is bound by any such findings. Any and all rights and defenses of
6 Wilmington to defend the claims and causes of action against it are preserved.

7 78. This comprehensive compromise and settlement, including the Ponzi
8 Findings, is a critical component of the Plan and is designed to provide a resolution of
9 the innumerable disputed intercompany and intercreditor Claims, Liens, and Causes of
10 Action that otherwise could take years to resolve, which would delay and undoubtedly
11 reduce the Distributions that ultimately would be available for all Creditors.

12 **I. Substantive Consolidation of Debtors.**

13 79. On the Effective Date, the Debtors, other than the Excluded Debtors with
14 respect to Claims in Classes 2B and 2C, shall be substantively consolidated pursuant to
15 sections 105(a), 541, 1123, and 1129 of the Bankruptcy Code; *provided, however,* that
16 the Debtors or iCap Trustees, as applicable, reserve the right to effectuate, without
17 further motion practice, substantive consolidation of the Excluded Debtors after the
18 Claims in Classes 2B and 2C are consensually resolved with the Holders of such Claims
19 upon filing notice with the Bankruptcy Court. As a result of the substantive
20 consolidation, on the Effective Date, all property, rights, and claims of the Debtors and
21 all Claims against the Debtors (other than Claims in Classes 2B and 2C) shall be deemed
22 to be pooled for purposes of Distributions under the Plan and, in the iCap Trustees'
23 discretion, other purposes. Further, as a result of this substantive consolidation, all
24 claims between and among the Debtors shall be cancelled. Holders of Allowed Claims
25 shall be entitled to only one satisfaction on account of such Claims, and any contingent
26 or otherwise duplicative Claims against one or more of the Debtors based upon claims

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1 for which one or more of the Debtors are also liable shall be disallowed. Holders of
2 Claims in Classes 2B and 2C shall be entitled to recover up to the full amount of their
3 Allowed Secured Claim from the sale proceeds for their Collateral.

4 80. Entry of this Confirmation Order shall constitute the approval, pursuant to
5 sections 105(a), 541, 1123, and 1129 of the Bankruptcy Code, of the substantive
6 consolidation of the Debtors in the manner set forth herein; *provided, however,* that
7 while the Debtors shall be substantively consolidated for purposes of Distributions to
8 Creditors, such that all Investors shall have claims against a single pool of the Debtors'
9 consolidated assets, the actual substantive consolidation of entities, particularly for tax
10 purposes, shall be at the option of the Debtors or the iCap Trust, as applicable.
11 Notwithstanding such substantive consolidation, however, fees payable pursuant to 28
12 U.S.C. § 1930 shall be due and payable by each individual Debtor through the Effective
13 Date.

14 81. Substantive consolidation under the Plan shall not affect, without
15 limitation, any defenses or rights the Debtors or the iCap Trust may have to any Claim,
16 Cause of Action, or Avoidance Action, including the ability to assert a counterclaim.

17 82. Any Intercompany Claims that could be asserted by one Debtor against
18 another Debtor will be extinguished immediately before the Effective Date with no
19 separate recovery on account of any such Claims and any Intercompany Liens that could
20 be asserted by one Debtor regarding any Estate Assets owned by another Debtor will
21 be deemed released and discharged on the Effective Date; *provided, however,* that
22 solely with respect to any Secured Claim of a non-debtor as to which the associated
23 Lien would be junior to any Intercompany Lien, the otherwise released Intercompany
24 Claim and associated Intercompany Lien will be preserved for the benefit of, and may
25 be asserted by the iCap Trust as to any Collateral so as to retain the relative priority and
26 seniority of such Intercompany Claim and associated Intercompany Lien.

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1 **J. Sources of Cash for Plan Distributions.**

2 83. The Debtors shall fund Distributions under the Plan with: (a) Available
3 Cash on hand; (b) the Exit Financing; and (c) all other proceeds, if any, generated from
4 the liquidation of the iCap Trust Actions.

5 **K. Vesting of iCap Trust Assets.**

6 84. On the Effective Date, the iCap Trust will be automatically vested with all
7 the Debtors' and the Estates' respective rights, title, and interest in and to all iCap Trust
8 Assets. Except as specifically provided in the Plan or this Confirmation Order, the iCap
9 Trust Assets shall automatically vest in the iCap Trust free and clear of all Claims,
10 Liens, or interests subject only to the iCap Trust Interests and the iCap Trust Expenses,
11 as provided for in the iCap Trust Agreement, and such vesting shall be exempt from
12 any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other
13 similar tax. The iCap Trustees shall be the exclusive trustee of the iCap Trust Assets for
14 purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the
15 representative of the Estates appointed pursuant to section 1123(b)(3) of the Bankruptcy
16 Code regarding all iCap Trust Assets. The iCap Trust shall hold and distribute the iCap
17 Trust Assets in accordance with the provisions of the Plan and the iCap Trust
18 Agreement.

19 85. Notwithstanding the foregoing or any other provision in the Plan, in the
20 event that the iCap Trust receives any monies from the United States or any other
21 Governmental Unit, obtained as forfeited assets (or otherwise) by the Governmental
22 Unit for the benefit of the Investor victims of the Debtors' prepetition Ponzi scheme, all
23 such monies shall not constitute Estate Assets or iCap Trust Assets, and the iCap
24 Trustees are authorized to and shall distribute all such monies only to Investors who are
25 Holders of Class A iCap Trust Interests or Class B iCap Trust Interests on account
26 thereof, subject to the Plan and the iCap Trust Agreement; *provided* that the iCap

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1 Trustees and their agents will be reimbursed from such monies for reasonable costs and
2 expenses incurred by said parties related to the iCap Trust's collection, administration,
3 and distribution of such monies to the applicable Investors.

4 86. Except as otherwise provided in the Plan or this Confirmation Order, the
5 iCap Trust, as a successor in interest to the Debtors, the Estates, and the Contributing
6 Claimants will have the exclusive right, power, and interest on behalf of itself, the
7 Debtors, the Estates, and the Contributing Claimants to institute, commence, file,
8 pursue, prosecute, enforce, abandon, settle, compromise, release, waive, dismiss, or
9 withdraw any and all iCap Trust Actions without any further order of the Bankruptcy
10 Court, except as otherwise provided in the iCap Trust Agreement. From and after the
11 Effective Date, the iCap Trust, in accordance with section 1123(b)(3) of the Bankruptcy
12 Code, shall serve as a representative of the Estates with respect to any and all iCap Trust
13 Actions that were Estate Assets and shall retain and possess the right to institute,
14 commence, file, pursue, prosecute, enforce, abandon, settle, compromise, release,
15 waive, dismiss, or withdraw, as appropriate, any and all iCap Trust Actions in any court
16 or other tribunal.

17 87. No person may rely on the absence of a specific reference in the Plan or
18 the Disclosure Statement to any Avoidance Action, Causes of Action, or Contributed
19 Claims against them as any indication that the iCap Trust will not pursue any and all
20 available Avoidance Actions, Causes of Action, or Contributed Claims against such
21 Person. The Debtors and the iCap Trust expressly reserve all rights to prosecute any and
22 all Avoidance Actions, Causes of Action, or Contributed Claims against any Person
23 other than the Released Parties, in accordance with the Plan.

24 88. Notwithstanding anything to the contrary in the Plan, the transfer of the
25 iCap Trust Assets in Article V of the Plan shall not be free and clear of the Supplemental
26 DIP Claims, the Obligations (as defined in the Supplemental DIP Credit Agreement),

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1 or the liens, claims, and interests granted to the DIP Parties by the Debtors pursuant to
2 the Supplemental DIP Credit Agreement. The iCap Trust assumes and remains bound
3 by the Supplemental DIP Credit Agreement and all Obligations (as defined in the
4 Supplemental DIP Credit Agreement) thereunder and the Bankruptcy Court's order
5 approving the Supplemental DIP Credit Agreement. The iCap Trust Assets shall be
6 encumbered by the liens, claims, obligations, and security interests granted to the DIP
7 Parties under the Supplemental DIP Credit Agreement and the Bankruptcy Court's
8 order approving the Supplemental DIP Credit Agreement, and the Trust shall not
9 distribute collateral (or proceeds thereof) of the DIP Parties until the Obligations (as
10 defined in the Supplemental DIP Credit Agreement) under the Supplemental DIP Credit
11 Agreement are satisfied in full.

12 **L. Abandonment of Certain Estate Assets.**

13 89. On the Effective Date, and without the need for further action, the
14 following Estate Assets shall be abandoned by the Debtors and their Estates pursuant to
15 Bankruptcy Code section 554 and shall not be considered iCap Trust Assets: (i) the real
16 property commonly known as 715–775 Broadway, Tacoma, WA; and (ii) the Debtors'
17 interests in Airlink Holdings, LLC's ("Holdings") and Airlink Markets, LLC
18 ("Markets" and, together with Holdings, "Airlink") (which entities shall be dissolved
19 by the Debtors in accordance with this Confirmation Order) including, without
20 limitation, Holdings' membership interests in Markets (the "Airlink Membership
21 Interests").

22 90. Upon the Effective Date, any of the Debtors' remaining interests in Airlink
23 including, without limitation, the Airlink Membership Interests, shall be abandoned. In
24 addition, the Debtors and/or the iCap Trustees, as applicable, are authorized to shut
25 down Airlink, notify all regulators, and file any applications or documents to effectuate
26 such abandonment and shutdown.

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1 **M. Termination of Directors and Officers.**

2 91. On the Effective Date, each of the Debtors' existing directors and officers
3 including, without limitation, the CRO, shall be terminated automatically without the
4 need for any further action and without the need for any corporate or limited liability
5 company filings, and they shall have no ongoing rights against or obligations to the
6 Debtors or the Estates, including under any applicable prepetition agreements (all of
7 which will be deemed terminated); *provided, however,* that the Debtors'
8 indemnification and defense obligations under any such agreements shall survive the
9 foregoing termination and remain unaltered by the Plan. On the Effective Date, the iCap
10 Trustees shall succeed to all such powers as would have been applicable to the Debtors'
11 officers and directors in respect of all iCap Trust Assets.

12 **N. Appointment of iCap Trustees.**

13 92. The appointment of Lance Miller and Seth Freeman as the iCap Trustees
14 to perform the functions of the iCap Trustees as set forth in Article V.D of the Plan and
15 the iCap Trust Agreement is hereby approved. The iCap Trustees shall have the rights,
16 powers, and obligations set forth in, and shall be entitled to reimbursement of their costs
17 and expenses incurred in connection with exercising their functions under, the Plan in
18 accordance with Article V.D of the Plan and the iCap Trust Agreement.

19 **O. Corporate Action.**

20 93. On the Effective Date, all matters under the Plan involving or requiring
21 action of the directors, members, managers, or officers of the Debtors, including, but
22 not limited to, actions requiring a vote or other approval of the board of directors or any
23 of the members or officers of the Debtors or the execution of any documentation
24 incident to or in furtherance of the Plan, shall be deemed to have been authorized by
25 this Confirmation Order and to have occurred and be in effect from and after the
26

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1 Effective Date, without any further action by the Bankruptcy Court or the directors,
2 members, managers, or officers of the Debtors.

3 94. Without limiting the generality of the foregoing, on the Effective Date and
4 automatically and without further action, (a) any existing director, manager, or officer
5 of the Debtors will be deemed to have resigned on the Effective Date without any further
6 corporate action, (b) the iCap Trustees shall be deemed the manager, officer, and
7 representative of the iCap Trust to exercise the rights, power, and authority of the iCap
8 Trust under applicable provisions of the Plan and bankruptcy and non-bankruptcy law,
9 and (c) all matters provided under the Plan shall be deemed to be authorized and
10 approved without further approval from the Bankruptcy Court. This Confirmation
11 Order modifies the Debtors' constituent documents such that the provisions of the Plan
12 can be effectuated. The Plan shall be administered by the iCap Trustees, and all actions
13 taken thereunder in the name of the iCap Trust shall be taken through the iCap Trustees.
14 All corporate governance activities of the iCap Trust shall be exercised by the iCap
15 Trustees in their discretion, subject to the terms of the Plan.

16 **P. Closing of the Chapter 11 Cases.**

17 95. As soon as practicable after the iCap Trustees exhaust substantially all of
18 the iCap Trust Assets by making the final Distributions under the Plan, the iCap
19 Trustees shall, at the expense of the iCap Trust, (a) abandon, destroy, or otherwise
20 dispose of any books and records of the Debtors that the iCap Trustees deem not
21 necessary for the continued administration of the Plan or required to be retained under
22 applicable law (as determined by the iCap Trustees in good faith), without the need for
23 any order of the Bankruptcy Court, *provided, however,* that such right shall be limited
24 in accordance with paragraph 97 of this Confirmation Order, (b) file a motion for entry
25 of a final decree closing the Chapter 11 Cases that have not been already closed in
26 accordance with the Bankruptcy Code and the Bankruptcy Rules and stating that the

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1 assets of the iCap Trust have been exhausted and final Distributions have been made
2 under the Plan, (c) file the necessary paperwork in the respective jurisdictions to
3 effectuate the dissolution of the Debtors in accordance with the laws of such
4 jurisdiction, and (d) resign as the officer, director, and manager, as applicable, of the
5 Debtors. Upon the Bankruptcy Court's entry of a Final Order granting the motion
6 described in clause (b) of the preceding sentence, the Debtors shall be deemed dissolved
7 for all purposes without the necessity for any other or further actions to be taken by or
8 on behalf of the Debtors or payments to be made in connection therewith, and the
9 remaining Chapter 11 Cases shall be closed on the date that the Bankruptcy Court has
10 entered such Final Order.

11 96. Notwithstanding the immediately preceding paragraph, if the iCap
12 Trustees deem it appropriate, the iCap Trustees may seek authority from the Bankruptcy
13 Court to close any of the Chapter 11 Cases and dissolve or merge any of the Debtors
14 prior to all final Distributions having been made under the Plan.

15 **Q. Books and Records.**

16 97. On the Effective Date, the Debtors' books and records shall be transferred
17 to the iCap Trustees. The iCap Trustees shall be free, in their discretion to abandon,
18 destroy, or otherwise dispose of the books and records in compliance with applicable
19 non-bankruptcy law, or any other order of the Bankruptcy Court, at any time on and
20 after the Effective Date, without the need for any other or further order; *provided,*
21 *however*, that neither the Debtors nor the iCap Trustees shall destroy or otherwise
22 abandon any books, records, electronically stored information, or other documents
23 without providing advance notice to the SEC (c/o William M. Uptegrove, U.S.
24 Securities and Exchange Commission, 950 East Paces Ferry Road, NE, Suite 900,
25 Atlanta, GA 30326, UptegroveW@SEC.GOV), which shall have seven (7) days to
26 object to any proposed destruction or abandonment, and with authorization from the

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1 Bankruptcy Court; *provided further* that, nothing in the Plan or this Confirmation Order
2 shall affect the obligations of the Debtors, the iCap Trust, and/or any transferee or
3 custodian to maintain any books and records that are subject to any governmental
4 subpoena, document preservation letter, or other investigative request from a
5 governmental agency.

6 **R. Dissolution of the Debtors.**

7 98. Upon the Distribution of all iCap Trust Assets, the Debtors shall be
8 dissolved for all purposes by the iCap Trustees without the necessity for any other or
9 further actions to be taken by or on behalf of any Debtors or payments to be made in
10 connection therewith; *provided, however*, that, without the need of any further approval,
11 the iCap Trustees in their discretion may execute and file documents and take all other
12 actions as they deem appropriate relating to the dissolution of the Debtors under
13 applicable law, and in such event, all applicable regulatory or governmental agencies
14 shall take all steps necessary to allow and effect the prompt dissolution of the Debtors
15 as provided herein, without the payment of any fee, tax, or charge and without need for
16 the filing of any certificates.

17 **S. Cancellation of Indebtedness.**

18 99. Except as otherwise provided in the Plan, on the Effective Date, except for
19 the purpose of evidencing a right to distribution under the Plan, any Notes or other
20 instruments or documents evidencing or creating any indebtedness or obligations of, or
21 interest in, the Debtors, except assumed executory contracts and assumed unexpired
22 leases, and/or such Notes or other instruments evidencing indebtedness or obligations
23 of the Debtors that are unimpaired, reinstated, assumed, or amended and restated under
24 the Plan, shall be cancelled and terminated and of no further force or effect.

1 **T. Exit Financing.**

2 100. The Debtors or the iCap Trust, as applicable, are hereby authorized to enter
3 into, execute, deliver, file, record, and issue the Exit Financing Documents and to incur
4 the obligations under the Exit Financing, including the granting of liens thereunder, the
5 payment of all fees, expenses, indemnities, and other amounts provided for in each Exit
6 Financing and the other instruments, agreements, and documents entered into in
7 connection therewith, all of which are hereby approved. The Debtors or the iCap Trust,
8 as applicable, are authorized and empowered to incur and to perform their obligations
9 in accordance with, and subject to, the Exit Financing Documents and to perform all
10 acts, and make, execute, and deliver all instruments and documents that may be required
11 for the performance by the Debtors or the iCap Trust, as applicable, under the Exit
12 Financing Documents and the creation and perfection of the liens described in and
13 provided for by the Exit Financing Documents.

14 101. Upon the Effective Date, the Exit Financing Documents shall constitute
15 legal, valid, binding, and authorized debt obligations of each of the Debtors or the iCap
16 Trust, as applicable, and the terms and provisions set forth in the Exit Financing
17 Documents shall be enforceable in accordance with their terms. The financial
18 accommodations to be extended pursuant to the Exit Financing Documents shall be
19 deemed to have been extended in good faith, for legitimate business purposes, are
20 reasonable, and are for reasonably equivalent value as an inducement to the lenders
21 thereunder to extend credit thereunder.

22 102. On the Effective Date, all of the liens and security interests to be granted
23 in accordance with the Exit Financing Documents (a) shall be deemed to be granted, (b)
24 shall be legal, binding, and enforceable liens on, and security interests in, the applicable
25 collateral granted thereunder in accordance with the terms of the Exit Financing
26 Documents, (c) shall be deemed automatically perfected and non-avoidable on the

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1 Effective Date, subject only to such liens and security interests as may be permitted
2 under the Exit Financing Documents, (d) shall not be subject to avoidance,
3 recharacterization, or equitable subordination for any purposes whatsoever, and (e) shall
4 not constitute preferential transfers, fraudulent transfers, or fraudulent conveyances
5 under the Bankruptcy Code or any applicable non-bankruptcy law.

6 **U. Effectuating Documents; Further Transactions.**

7 103. On and after the Effective Date, the iCap Trustees are authorized to, and
8 may issue, execute, deliver, file, or record, such contracts, instruments, releases, and
9 other agreements or documents and take such actions as may be necessary or
10 appropriate to effectuate, implement, and further evidence the terms and conditions of
11 the Plan, without the need for any approvals, authorization, or consents, except for those
12 expressly required pursuant to the Plan.

13 104. Issuance of the iCap Trust Interests in accordance with the Plan is
14 approved. The iCap Trust is authorized and empowered, without further approval of
15 this Bankruptcy Court or any other Person, to take such actions and to perform such
16 acts as may be necessary, desirable, or appropriate to implement the issuance of the
17 iCap Trust Interests in accordance with the Plan and to execute and deliver all
18 agreements, documents, securities, instruments, and certificate relating thereto.

19 105. The approvals and authorizations specifically set forth in this Confirmation
20 Order are not intended to limit the authority of the Debtors or the iCap Trustees, as
21 applicable, to take any and all actions necessary or appropriate to implement, effectuate,
22 and consummate any and all document or transactions contemplated by the Plan or this
23 Confirmation Order.

24 **V. Section 1146 Exemption.**

25 106. In accordance with section 1146 of the Bankruptcy Code and Washington
26 Administrative Code 458-61A-207, no stamp tax, conveyance fee, real estate, excise,

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1 or other transfer tax, mortgage tax, mortgage recording tax, Uniform Commercial Code
2 filing or recording filing fee, or similar tax shall apply to (a) the sale or transfer of iCap
3 Trust Assets to the iCap Trust; (b) the issuance, Distribution, transfer, or exchange of
4 Notes or equity securities under the Plan; (c) the establishment of any mortgage, deed
5 of trust, Lien, pledge, or other security interest, or the execution or delivery of any lease,
6 sublease, deed, or other transfer instrument related to or in support of the Plan; or (d)
7 the sale of any real estate by the iCap Trust. Upon entry of this Confirmation Order, the
8 appropriate state or local governmental officials or agents and any third party shall forgo
9 the collection of any such tax, recordation fee, or governmental assessment and accept
10 for filing and recordation any of the foregoing instruments or other documents without
11 the payment of any such tax, recordation fee, or assessment.

12 **W. Preservation of Rights of Action.**

13 107. Except as otherwise provided in the Plan or this Confirmation Order
14 (including in the Investor Claims Special Provisions), in accordance with section
15 1123(b) of the Bankruptcy Code, from and after the Effective Date, the iCap Trust will
16 retain all rights to institute, commence, file, pursue, prosecute, enforce, abandon, settle,
17 compromise, release, waive, dismiss, or withdraw, as appropriate, any and all of the
18 Debtors' or Estates' Causes of Action and Causes of Action that are Contributed Claims
19 (whether existing as of the Petition Date or thereafter arising), and all Avoidance
20 Actions, all as iCap Trust Actions, in each case in any court or other tribunal, including
21 in an adversary proceeding Filed in the Chapter 11 Cases, subject to the requirements
22 set forth in the Plan and the iCap Trust Agreement. The iCap Trust shall have the
23 exclusive right, power, and interest on behalf of itself, the Debtors, the Estates, and the
24 Contributing Claimants to, enforce, sue on, settle, compromise, transfer, or assign (or
25 decline to do any of the foregoing) any or all of the iCap Trust Actions without notice
26 to or approval from the Bankruptcy Court, subject to the iCap Trust Agreement. In

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1 accordance with the Plan, without any further notice to or action, order, or approval of
2 the Bankruptcy Court, from and after the Effective Date, the iCap Trust may
3 compromise and settle iCap Trust Actions, subject to the iCap Trust Agreement. For
4 the avoidance of doubt, nothing in the Disclosure Statement or the Plan shall require
5 the iCap Trust to commence or pursue litigation concerning any iCap Trust Action.

6 108. The failure to specifically identify in the Disclosure Statement (including
7 its exhibits and schedules) or the Plan any potential or existing Avoidance Actions or
8 Causes of Action as an iCap Trust Action is not intended to and shall not limit the rights
9 of the iCap Trust to pursue any such Avoidance Actions or Causes of Action. Unless a
10 iCap Trust Action is expressly waived, relinquished, released, compromised, or settled
11 in the Plan or any Final Order (including this Confirmation Order), the Debtors
12 expressly reserve such iCap Trust Action for later resolution by the iCap Trust
13 (including any Avoidance Actions or Causes of Action not specifically identified or of
14 which the Debtors may presently be unaware or that may arise or exist by reason of
15 additional facts or circumstances unknown to the Debtors at this time or facts or
16 circumstances that may change or be different from those the Debtors now believe to
17 exist). In addition, the right to pursue or adopt any claims alleged in any lawsuit in
18 which any Debtor or the iCap Trust is a plaintiff, defendant, or an interested party is
19 fully reserved as against any Person that is not a Released Party, including the plaintiffs
20 or co-defendants in such lawsuits. No preclusion doctrine, including the doctrines of *res*
21 *judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial,
22 equitable, or otherwise), or laches, shall apply to any iCap Trust Actions upon, after, or
23 as a consequence of the confirmation of the Plan.

24 **X. Releases, Exculpation, and Injunctions.**

25 109. The following release, exculpation, and injunction provisions set forth in
26 Article X of the Plan are hereby approved and authorized in their entirety.

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1 110. **Releases and Related Matters.** On the Effective Date, for good and
2 valuable consideration, the adequacy of which is hereby confirmed, each of the
3 Releasing Parties shall be deemed, to the fullest extent permitted under applicable
4 law, to have forever released, waived, and discharged each of the Released Parties
5 from any and all claims, obligations, suits, judgments, damages, demands, debts,
6 rights, Causes of Action, and liabilities whatsoever, whether known or unknown,
7 whether foreseen or unforeseen, whether liquidated or unliquidated, whether fixed
8 or contingent, whether matured or unmatured, existing or hereafter arising, at
9 law, in equity, or otherwise, that are based in whole or in part on any act, omission,
10 transaction, event, or other occurrence taking place on or prior to the Effective
11 Date in any way relating to the Debtors, the Estates, the conduct of the Debtors'
12 businesses, the Chapter 11 Cases, or the Plan, except for acts or omissions that are
13 determined by Final Order to have constituted actual fraud or willful misconduct;
14 *provided, however,* that nothing in Article X.G of the Plan shall release or otherwise
15 affect any Person's rights under the Plan or the Confirmation Order.

16 111. Entry of the Confirmation Order shall constitute (i) the Bankruptcy
17 Court's approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in
18 Article X.G of the Plan; and (ii) the Bankruptcy Court's findings that such releases
19 are (1) in exchange for good and valuable consideration provided by the Released
20 Parties (including performance of the terms of the Plan), and a good-faith
21 settlement and compromise of the released claims, (2) in the best interests of the
22 Debtors, the Estates, and any Holders of Claims that are Releasing Parties, (3) fair,
23 equitable, and reasonable, (4) given and made after due notice and opportunity for
24 hearing, and (5) a bar to any of the Releasing Parties asserting any released claim
25 against any of the Released Parties.

26

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1 112. For the avoidance of doubt, the Release does not apply to Christopher
2 Christensen and/or Jim Christensen. The Released Parties shall not include any
3 prepetition insider of any of the Debtors, any non-debtor affiliates of the Debtors or
4 insider of any such non-debtor affiliates, any prepetition employee of any of the Debtors
5 involved in any way in the prepetition marketing or sale of any products offered by any
6 of the Debtors, and any other Person (including any “broker,” salesperson, consultant,
7 affiliated entity, or professional) involved in any way in the prepetition marketing or
8 sale of any products offered by any of the Debtors (the “Excluded Parties”). Excluded
9 Parties shall not include any consultant retained or engaged by the Debtors during the
10 Chapter 11 Cases except for Christopher Christensen and Jim Christensen.

11 113. **Exculpation. On the Effective Date, for good and valuable**
12 **consideration, the adequacy of which is hereby confirmed, to the maximum extent**
13 **permitted by law, none of the Exculpated Parties shall have or incur any liability**
14 **to any Person, including to any Holder of a Claim or an Equity Interest, for any**
15 **postpetition act or omission occurring from the Petition Date to the Effective Date**
16 **in connection with, relating to, or arising out of the Chapter 11 Cases, the**
17 **formulation, negotiation, preparation, dissemination, solicitation of acceptances,**
18 **implementation, Confirmation, or consummation of the Plan, the Disclosure**
19 **Statement, or any contract, instrument, release, or other agreement or document**
20 **created, executed, or contemplated in connection with the Plan, or the**
21 **administration of the Plan or the property to be distributed under the Plan, or any**
22 **other act taken or omission originating or occurring after the Petition Date but**
23 **before the Effective Date in connection with or in contemplation of the**
24 **restructuring, sale, or liquidation of the Debtors; provided, however, that nothing**
25 **in Article X.H of the Plan shall release or otherwise affect any Person’s rights**
26 **under the Plan or the Confirmation Order, including with respect to the**

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SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503 224-5560

1 Supplemental DIP Credit Agreement; and *provided, further*, that the exculpation
2 provisions of Article X.H of the Plan shall not apply to acts or omissions
3 constituting actual fraud, willful misconduct, gross negligence, or malpractice by
4 such Exculpated Party as determined by a Final Order. This exculpation shall be
5 in addition to, and not in limitation of, all other releases, indemnities, exculpations,
6 and any other applicable law or rules protecting the Exculpated Parties from
7 liability. This Confirmation Order shall serve as a permanent injunction against
8 any Person seeking to enforce any Causes of Action against the Exculpated Parties
9 that are encompassed by the exculpation provided by Article X.H of the Plan.

10 114. **Injunction.** Except as otherwise expressly provided in the Plan, and
11 except in connection with the enforcement of the Plan or any documents provided
12 for or contemplated in the Plan, all Persons who have held, hold, or may hold
13 Claims against or Equity Interests in the Debtors or the Estates that (i) have been
14 released pursuant to Article X.G of the Plan or (ii) are subject to exculpation
15 pursuant to Article X.H of the Plan, are permanently enjoined from and after the
16 Effective Date from: (a) commencing or continuing in any manner, directly or
17 indirectly, any action or other proceeding of any kind against the Debtors, the
18 Estates, or their successors and assignees, or any of their assets and property, with
19 respect to any such Claim or Equity Interest; (b) the enforcement, attachment,
20 collection, or recovery by any manner or means, directly or indirectly, of any
21 judgment, award, decree, or order against the Debtors, the Estates, or their
22 successors and assignees, or any of their assets and property, with respect to any
23 such Claim or Equity Interest; (c) creating, perfecting, or enforcing, directly or
24 indirectly, any Lien or encumbrance of any kind against the Debtors, the Estates,
25 or their successors and assignees, or any of their assets and property, with respect
26 to any such Claim or Equity Interest; (d) asserting, directly or indirectly, any

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1 setoff, or recoupment of any kind against any obligation due to the Debtors, the
2 Estates, or their successors and assignees, or any of their assets and property, with
3 respect to any such Claim or Equity Interest, unless approved by the Bankruptcy
4 Court; and (e) any act, in any manner, in any place whatsoever, that does not
5 conform to or comply with the provisions of the Plan with respect to such Claim
6 or Equity Interest. Without limiting the foregoing, the automatic stay provided
7 under section 362(a) of the Bankruptcy Code shall remain in effect until the
8 Chapter 11 Cases are closed. Nothing contained in Article X.I of the Plan shall
9 prohibit the Holder of a Filed proof of Claim from litigating its right to seek to
10 have such Claim declared an Allowed Claim and paid in accordance with the
11 distribution provisions of the Plan, or enjoin or prohibit the interpretation or
12 enforcement by the Holder of such Claim or Equity Interest of any of the
13 obligations of the Debtors or the iCap Trustees under the Plan. The iCap Trust
14 shall be entitled, as liquidated damages, to the payment of any fees and costs
15 incurred by the iCap Trust to address any violation of the injunction contained in
16 Article X.I of the Plan.

17 115. Injunction Against Interference with the Plan. Upon entry of this
18 Confirmation Order, all Holders of Claims and Equity Interests and their
19 respective current and former employees, agents, officers, directors, principals,
20 and direct and indirect affiliates shall be enjoined from taking any actions of any
21 kind against the iCap Trustees, the iCap Trust, or any of the iCap Trust Assets
22 that interfere with the implementation or consummation of the Plan. The iCap
23 Trust shall be entitled, as liquidated damages, to the payment of any fees and costs
24 incurred by the iCap Trust to address any violation of the injunction contained in
25 Article X.J of the Plan.

26

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1 **Y. Provisions Governing Distributions.**

2 116. The distribution provisions of Article VI of the Plan shall be, and hereby
3 are, approved in their entirety. The iCap Trustees shall make all Distributions under the
4 Plan to the appropriate Holders of Allowed Claims in accordance with the terms of the
5 Plan and the iCap Trust Agreement, as applicable.

6 **Z. Administration of the iCap Trust.**

7 117. The iCap Trust Agreement, substantially in the form filed with the Plan
8 Supplement, as such Plan Supplement may be amended in accordance with the Plan and
9 this Confirmation Order is approved.

10 **AA. Post-Confirmation Notices, Professional Compensation, and Bar Dates.**

11 1. **Notice of Entry of the Confirmation Order and Occurrence of the**
12 **Effective Date.**

13 118. In accordance with Bankruptcy Rules 2002 and 3020(c), promptly after the
14 occurrence of the Effective Date, the Debtors shall promptly cause notice of
15 confirmation of the Plan and the occurrence of the Effective Date (the “Notice of
16 Effective Date”), to be served by e-mail or United States first class mail to all parties
17 served with the notice of the Confirmation Hearing; *provided*, that the Debtors are
18 excused from distributing the Notice of Effective Date to those addresses from which
19 one or more prior notices served in these Chapter 11 Cases were returned as
20 undeliverable unless the Debtors are provided with updated addresses for such entities
21 before the Effective Date. Mailing of the Notice of Effective Date in the time and
22 manner set forth in this paragraph will be good, adequate, and sufficient notice under
23 the particular circumstances and in accordance with the requirements of Bankruptcy
24 Rules 2002 and 3020(c). No further notice is necessary.

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1 119. The Notice of Effective Date will constitute sufficient notice of the entry
2 of this Confirmation Order to filing and recording officers, and will be a recordable
3 instrument notwithstanding any contrary provision of applicable non-bankruptcy law.

4 **2. Final Administrative Claims Bar Date.**

5 120. The provisions governing the treatment of Allowed Administrative
6 Expense Claims set forth in Article III.A.1 of the Plan are approved in their entirety.
7 Administrative expense requests asserting Administrative Expense Claims arising from
8 the Petition Date through and including the Effective Date, excluding (a) Claims of
9 Professional Persons in the Chapter 11 Cases and (b) claims arising in the ordinary
10 course of business, must be filed no later than thirty (30) days after the notice of the
11 Effective Date is filed with the Bankruptcy Court or such later date as may be
12 established by order of the Bankruptcy Court (the “Administrative Expense Claims Bar
13 Date”). Holders of Administrative Expense Claims who are required to file a request
14 asserting Administrative Expense Claims and who do not file such request by the
15 Administrative Expense Claims Bar Date, may not receive or be entitled to receive any
16 payment or distribution of property from the Debtors or their successors or assigns with
17 respect to such Administrative Expense Claim in the Chapter 11 Cases.
18 Notwithstanding the foregoing, pursuant to section 503(b)(1)(D) of the Bankruptcy
19 Code, no Governmental Unit shall be required to file a request for payment of any
20 Administrative Expense Claim of a type described in sections 503(b)(1)(B) or
21 503(b)(1)(C) of the Bankruptcy Code as a condition to such Claim being Allowed.

22 **3. Professional Fees.**

23 121. The provisions governing compensation or reimbursement of Professional
24 Persons set forth in Article III.A.1.b of the Plan are approved in their entirety. All final
25 requests for compensation or reimbursement of Professional Persons retained in these
26 Chapter 11 Cases for services performed and expenses incurred prior to the Effective

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1 Date shall be filed and served on: (a) the iCap Trustees, (i) Pivot Management Group,
2 LLC, 1230 Rosecrans Ave., Suite 530, Manhattan Beach, CA 90266 (Attn: Lance
3 Miller (Lance.miller@pivotgrp.com)) and (ii) B. Riley Advisory Services, 19800
4 MacArthur Boulevard, Suite 820, Irvine, CA 92612 (Attn: Seth Freeman
5 (SFreeman@brileyfin.com)); (b) counsel to the Debtors, O'Melveny & Myers LLP (i)
6 400 South Hope Street, Suite 1900, Los Angeles, CA 90071 (Attn: Julian Gurule
7 (jgurule@omm.com)) and (ii) 1301 Avenue of the Americas, Suite 1700, New York,
8 NY 10019 (Attn: Diana Perez (dperez@omm.com)); (c) counsel to the Unsecured
9 Creditors' Committee, (i) Bush Kornfeld LLP, 601 Union Street, Suite 5000, Seattle,
10 WA 98101 (Attn: Armand J. Kornfeld (jkornfeld@bskd.com) and Aimee S. Willig
11 (awillig@bskd.com)) and (ii) K&L Gates, 925 Fourth Avenue, Suite 2900, Seattle, WA
12 98104 (Attn: John T. Bender (John.Bender@klgates.com)); (d) the Office of the United
13 States Trustee, United States Department of Justice, 920 West Riverside Avenue, Room
14 593, Spokane, WA 99201 (Attn: Gary W. Dyer (Gary.W.Dyer@usdoj.gov)); and (e)
15 such other Persons who are designated by the Bankruptcy Rules, the Confirmation
16 Order, or other order of the Bankruptcy Court, by no later than sixty (60) days after the
17 Effective Date, unless otherwise agreed by the Debtors or the iCap Trustees, as
18 applicable. Objections to any Claims of Professional Fees must be filed with the
19 Bankruptcy Court and served on the iCap Trustees and the applicable Professional
20 Person no later than fourteen (14) days after service of such applicable final fee
21 application, unless otherwise ordered by the Bankruptcy Court. After Notice and
22 Hearing in accordance with the procedures established by the Bankruptcy Code and any
23 prior orders of the Bankruptcy Court in the Chapter 11 Cases, the Allowed amounts of
24 such Claims shall be determined by the Bankruptcy Court and, once approved by the
25 Bankruptcy Court, shall be promptly paid in Cash.

26

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1 **4. Bar Date for Rejection Damages Claims.**

2 122. Proofs of Claim asserted in connection with any executory contracts or
3 unexpired leases rejected under the Plan must be filed so that they are actually received
4 by BMC no later than thirty (30) days after service of the notice of Effective Date. Any
5 proofs of Claim not filed and served within such time period shall not receive or be
6 entitled to receive any payment or Distribution from the Debtors or the iCap Trust with
7 respect to such Claim in the Chapter 11 Cases.

8 **5. Notice of Subsequent Pleadings.**

9 123. Except as otherwise may be provided in the Plan or herein, notice of all
10 subsequent pleadings in the Chapter 11 Cases after the Effective Date shall be limited
11 to the following parties: (a) the iCap Trustees (as set forth in the iCap Trust Agreement);
12 (b) the U.S. Trustee; and (c) any Person that files a renewed request for notice under
13 Bankruptcy Rule 2002 after the Effective Date.

14 **BB. Payment of Statutory Fees.**

15 124. The Debtors shall timely make all payments required under the Plan.
16 Without limiting the generality of the foregoing, the iCap Trust shall be responsible for
17 the timely payment of quarterly fees incurred pursuant to 28 U.S.C. § 1930(a)(6)
18 following Confirmation until the Case Closing Date. After Confirmation, the iCap Trust
19 shall serve on the United States Trustee quarterly a financial report for each quarter (or
20 portion thereof) the Chapter 11 Cases remain open. The financial report shall include a
21 statement of all disbursements made during the course of the relevant quarter, whether
22 or not pursuant to the Plan.

23 **CC. Effectiveness of All Actions.**

24 125. All actions authorized to be taken pursuant to the Plan, including, without
25 limitation, entry into the iCap Trust Agreement and the Exit Financing, shall be
26 effective on, prior to, or after the Effective Date pursuant to this Confirmation Order,

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1 without further application to, or order of the Bankruptcy Court, or further action by the
2 respective officers, directors, managers, members, or stockholders of the Debtors or the
3 iCap Trustees and with the effect that such actions had been taken by unanimous action
4 of such officers, directors, managers, members, or stockholders.

5 126. This Confirmation Order shall constitute all approvals and consents
6 required, if any, by the laws, rules, and regulations of all states and any other
7 governmental authority with respect to the implementation or consummation of the Plan
8 and any documents, instruments, or agreements, and any amendments or modifications
9 thereto, and any other acts and transactions referred to in or contemplated by the Plan,
10 the Plan Supplement, the Disclosure Statement, the iCap Trust Agreement, and any
11 other documents, instruments, securities, or agreements, and any amendments or
12 modifications thereto, including with respect to the Exit Financing.

13 **DD. Conflicts.**

14 127. Except as set forth in the Plan, to the extent that any provision of the Plan,
15 the Plan Supplement, or any other document (but excluding, for the avoidance of doubt,
16 this Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices,
17 supplements, or amendments to any of the foregoing), conflict with or are in any way
18 inconsistent with any provision of the Plan (without reference to the Plan Supplement),
19 the Plan (without reference to the Plan Supplement) shall govern and control; *provided,*
20 *however*, that notwithstanding anything herein or the Plan to the contrary, in the event
21 of a conflict between this Confirmation Order, on the one hand, and any of the Plan or
22 the Plan Supplement on the other hand, this Confirmation Order shall govern and
23 control in all respects.

24 **EE. SEC Rights.**

25 128. Notwithstanding any language to the contrary in the Disclosure Statement,
26 the Plan, and/or this Confirmation Order, no provision shall (i) preclude the SEC from

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1 enforcing its police or regulatory powers or (ii) enjoin, limit, impair, or delay the SEC
2 from commencing or continuing any claims, Causes of Action, proceedings, or
3 investigations against any non-Debtor Person or non-Debtor entity in any forum.

4 **FF. Reservation of Rights.**

5 129. Except as expressly set forth in the Plan, the Plan shall have no force or
6 effect unless the Bankruptcy Court shall enter this Confirmation Order. None of the
7 filing of the Plan, any statement or provision contained herein, or the taking of any
8 action by any Debtor with respect to the Plan shall be or shall be deemed to be an
9 admission or waiver of any rights of any Debtor with respect to the Holders of Claims
10 or Equity Interest before the Effective Date.

11 **GG. Severability.**

12 130. In the event the Bankruptcy Court determines, before Confirmation, that
13 any provision in the Plan is invalid, void, or unenforceable, the Bankruptcy Court shall
14 have the power to alter and interpret such term or provision to make it valid or
15 enforceable to the maximum extent practicable, consistent with the original purpose of
16 the term or provision held to be invalid, void, or unenforceable, and such term or
17 provision shall then be applicable as altered or interpreted. Notwithstanding any such
18 holding, alteration, or interpretation, the remainder of the terms and provisions of the
19 Plan will remain in full force and effect and will in no way be affected, impaired, or
20 invalidated by such holding, alteration, or interpretation. This Confirmation Order shall
21 constitute a judicial determination and shall provide that each term and provision of the
22 Plan, as it may have been altered or interpreted in accordance with the foregoing, is:
23 (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be
24 deleted or modified without consent of the Debtors; and (c) nonseverable and mutually
25 dependent.

26
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1 **HH. Revocation or Withdrawal of the Plan; Non-Occurrence of Effective Date**
2 **Conditions.**

3 131. The Debtors reserve the right to revoke or withdraw the Plan before
4 Confirmation and to file a subsequent plan. If the Debtors revoke or withdraw the Plan
5 before Confirmation, then the Plan shall be deemed null and void. In such event, nothing
6 contained herein shall constitute or be deemed a waiver or release of any claims by or
7 against the Debtors or to prejudice in any manner the rights of the Debtors in any further
8 proceedings involving the Debtors.

9 132. If the conditions necessary for the Effective Date are not met or duly
10 waived as outlined in Articles IX.A and B of the Plan, upon notification filed by the
11 Debtors with the Bankruptcy Court, the following shall occur: (i) this Confirmation
12 Order will be vacated; (ii) no Distributions will be made; (iii) the Debtors, the Estates,
13 the Committee, and all Creditors will revert to the status quo as of the day immediately
14 preceding the Confirmation Hearing as if the Confirmation Order had not been entered;
15 and (iv) all obligations of the Debtors and the Estates regarding Claims will remain
16 unchanged. Nothing in the Plan will constitute a waiver or release of any Claims by or
17 against the Debtors, the Estates, or any other Person, nor will it prejudice the rights,
18 claims, or defenses of the Debtors, the Estates, or any other Person.

19 **II. Retention of Jurisdiction.**

20 133. Pursuant to sections 105(c) and 1142 of the Bankruptcy Code, and
21 notwithstanding entry of this Confirmation Order and the occurrence of the Effective
22 Date, the Bankruptcy Court retains jurisdiction and power over all matters arising in,
23 arising under, or related to the Chapter 11 Cases and the Plan to the fullest extent
24 permitted by law, including the jurisdiction and power related to those matters set forth
25 in Article XIII of the Plan.

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1 **JJ. Dissolution of Committee.**

2 134. Upon the occurrence of the Effective Date, the Committee shall dissolve
3 automatically, whereupon its members, professionals, and agents shall be released from
4 any duties and responsibilities in the Chapter 11 Cases and under the Bankruptcy Code
5 (except with respect to (a) obligations arising under confidentiality agreements, which
6 shall remain in full force and effect, (b) applications for allowance and payment of the
7 fees of Professional Persons, and (c) any pending motions or other actions seeking
8 enforcement or implementation of the provisions of the Plan).

9 **KK. Final Order.**

10 135. This Confirmation Order is a Final Order and the period in which an appeal
11 must be filed shall commence upon entry hereof.

12 **LL. Enforceability of Plan.**

13 136. Pursuant to sections 1123(a), 1141(a), and 1142 of the Bankruptcy Code,
14 the Plan and all Plan-related documents shall be, and hereby are, valid, binding, and
15 enforceable. Upon the occurrence of the Effective Date, the Plan and the Plan
16 Supplement shall be immediately effective and enforceable and deemed binding on the
17 Debtors, all Creditors and Holders of Equity Interests, and all other Persons in
18 accordance with their respective terms.

19 **MM. Substantial Consummation.**

20 137. “Substantial Consummation” of the Plan, as defined in section 1101(2) of
21 the Bankruptcy Code, shall be deemed to occur on the Effective Date.

22 **NN. Immediate Binding Effect.**

23 138. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or
24 otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be
25 immediately effective and enforceable and deemed binding upon the Debtors, and any
26 and all Holders of Claims or Equity Interests (irrespective of whether such Claims or

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Equity Interests are deemed to have accepted the Plan), all Persons and Entities that are party, or subject, to the settlements, compromises, releases, and injunctions described in the Plan, each Person and Entity acquiring property under the Plan, and the respective heirs, executors, administrators, successors or assigns, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, or guardians, if any, with respect to the foregoing.

///End of Order///

PRESENTED BY:

By: /s/
OREN B. HAKER (WSBA No. 48725)
BRITTA E. WARREN, WSBA No. 43329
BLACK HELTERLINE LLP

Co-Counsel to Debtors and Debtors in Possession

By: /s/
JULIAN I. GURULE (Admitted *Pro Hac Vice*)
O'MELVENY & MYERS, LLP

Co-Counsel to Debtors and Debtors in Possession

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BLACK HELTERLINE LLP
805 SW BROADWAY
SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503-224-5560

1 By: /s/
2 ARMAND J. KORNFELD, WSBA No. 17214
3 AIMEE S. WILLIG, WSBA No. 22859
4 JASON WAX, WSBA No. 41944
5 BUSH KORNFELD LLP

6 *Counsel for the Official Committee of
7 Unsecured Creditors*

8 And

9 JOHN T. BENDER, WSBA No. 49658
10 K&L GATES LLP

11 *Special Litigation Counsel for the Official
12 Committee of Unsecured Creditors*

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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Exhibit 2

Redline of Revised Proposed Confirmation Order

**28 NOTICE OF FILING OF REVISED PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING
SECOND MODIFIED SECOND AMENDED PLAN OF
LIQUIDATION AND REDLINE**

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805 SW BROADWAY
SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503 224-5560

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

ICAP ENTERPRISES, INC., *et al.*,

Debtors.¹

Chapter 11

Lead Case No. 23-01243-WLH11
Jointly Administered

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER CONFIRMING THE
SECOND MODIFIED SECOND
AMENDED JOINT CHAPTER 11
PLAN OF LIQUIDATION OF ICAP
ENTERPRISES, INC. AND ITS
AFFILIATED DEBTORS
PROPOSED BY THE DEBTORS
AND OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

¹ The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding 1, LLC (23-01256-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01253-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11); Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); iCap Holding 6 LLC (23-01274-11); Colpitts Sunset, LLC (23-01432-11); CS2 Real Estate Development LLC (23-01434-11); and iCap International Investments, LLC (23-01464-11).

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1 iCap Enterprises, Inc., and its affiliated debtors and debtors in possession
2 (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the
3 “Chapter 11 Cases”), having

- 4 a. commenced, on September 29, 2023 (the “Petition Date”),² the Chapter
5 11 Cases by filing voluntary petitions in the United States Bankruptcy
6 Court for the Eastern District of Washington (the “Bankruptcy Court”)
7 for relief under chapter 11 of title 11 of the United States Code, 11
8 U.S.C. §§ 101-1532 *et seq.* (the “Bankruptcy Code”);
9
10 b. filed, on July 16, 2024, the (i) *Disclosure Statement for the Joint*
11 *Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and its*
12 *Affiliated Debtors Proposed by the Debtors and Official Committee of*
13 *Unsecured Creditors* [ECF No. 1088] and (ii) *Joint Chapter 11 Plan of*
14 *Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors*
15 *Proposed by the Debtors and Official Committee of Unsecured*
16 *Creditors* [ECF No. 1089];
17
18 c. filed, on July 19, 2024, the *Motion For an Order Approving (I)*
19 *Proposed Disclosure Statement; (II) Solicitation and Voting*
20 *Procedures; (III) Notice and Objection Procedures for Confirmation of*
21 *Joint Plan of Liquidation; and (IV) Granting Related Relief* [ECF No.
22 1142];
23
24 d. filed, on August 20, 2024, the (i) *First Amended Disclosure Statement*
25 *for the Joint Chapter 11 Plan of Liquidation of iCap Enterprises, Inc.*
26 *and its Affiliated Debtors Proposed by the Debtors and Official*

25 ² Certain of the Debtors filed their own chapter 11 cases on September 30, November 8, and November 14, 2023. For
26 purposes of this Confirmation Order, “Petition Date” as used herein will refer to the earliest of the Debtors’ respective
filing dates and “Chapter 11 Cases” includes all of the Debtors’ cases, irrespective of when they were filed.

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- Committee of Unsecured Creditors [ECF No. 1221] and (ii) First Amended Joint Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors Proposed by the Debtors and Official Committee of Unsecured Creditors [ECF No. 1222];
- e. filed, on August 26, 2024, the (i) *Second Amended Disclosure Statement for the Joint Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors Proposed by the Debtors and Official Committee of Unsecured Creditors* [ECF No. 1236] and (ii) *Second Amended Joint Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors Proposed by the Debtors and Official Committee of Unsecured Creditors* [ECF No. 1237];
- f. obtained, on August 29, 2024, the *Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Joint Plan of Liquidation; and (IV) Granting Related Relief* [ECF No. 1247] (the “Solicitation Order”), which, among other things (i) approved the Disclosure Statement (as defined below) as having adequate information, as required under section 1125(a) of the Bankruptcy Code, (ii) authorized the Debtors to solicit votes with regard to the acceptance or rejection of the Plan (as defined below), and (iii) approved the Debtors’ related notices, forms, and ballots to be submitted to parties in interest in connection with voting on the Plan and the Debtors’ voting procedures (the “Voting Procedures”);
- g. filed, on August 30, 2024, the *Modified Second Amended Disclosure Statement for the Joint Chapter 11 Plan of Liquidation of iCap*

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1 *Enterprises, Inc. and its Affiliated Debtors Proposed by the Debtors and*
2 *Official Committee of Unsecured Creditors [ECF No. 1248]* (the
3 “Disclosure Statement”);

- 4 h. filed, on August 30, 2024, the *Modified Second Amended Joint Chapter*
5 *11 Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated*
6 *Debtors Proposed by the Debtors and Official Committee of Unsecured*
7 *Creditors [ECF No. 1249]*;
- 8 i. caused, on August 29, 2024 and September 4, 2024, the Solicitation
9 Order to be distributed consistent with the Bankruptcy Code, the Federal
10 Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the
11 Solicitation Order, as evidenced, by among other things, the *Certificate*
12 *of Service [ECF No. 1261]* (the “Solicitation Affidavit”) filed by BMC
13 Group, Inc. (“BMC”), the Debtors’ Court-approved noticing, claims, and
14 balloting agent, on September 6, 2024;
- 15 j. caused, on September 4, 2024, the solicitation materials and notice of
16 the deadline for voting on the Plan and objecting to confirmation of the
17 Plan to be distributed consistent with the Bankruptcy Code, the
18 Bankruptcy Rules, and the Solicitation Order, as evidenced, by among
19 other things, the Solicitation Affidavit filed by BMC on September 6,
20 2024;
- 21 k. caused notice of the hearing to consider confirmation of the Plan (the
22 “Confirmation Hearing”) to be distributed consistent with the
23 Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Order, as
24 evidenced, by among other things, the Solicitation Affidavit filed by
- 25
- 26

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1 BMC, on September 6, 2024, and the Certificate of Service [ECF No.
2 1394] filed by BMC, on October 15, 2024;

- 3 l. filed, on September 6, 2024, the *Amended Supplemental Declaration of*
4 *Jeffrey H. Kinrich in Support of the Ponzi Findings and Confirmation of*
5 *the Plan* [ECF No. 1262] (the “Kinrich Declaration”);
6 m. filed, on September 18, 2024, the *Notice of Filing of Plan Supplement*
7 *Pursuant to Modified Second Amended Joint Chapter 11 Plan of*
8 *Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors*
9 *Proposed by the Debtors and Official Committee of Unsecured*
10 *Creditors* [ECF No. 1270] (the “Plan Supplement”);
11 n. filed, on October 9, 2024, the *Second Modified Second Amended Joint*
12 *Chapter 11 Plan of Liquidation of iCap Enterprises, Inc. and its*
13 *Affiliated Debtors Proposed by the Debtors and Official Committee of*
14 *Unsecured Creditors* [ECF No. 1360] (attached hereto as Exhibit A, and
15 including all exhibits thereto and as the same may be amended,
16 modified, or supplemented from time to time pursuant to the terms
17 thereof, the “Plan”);³
18 o. filed, on October 9, 2024, the *Declaration of Brad Daniel of BMC*
19 *Group Regarding Voting and Tabulation of Ballots for Modified Second*
20 *Amended Joint Chapter 11 Plan of Liquidation of iCap Enterprises, Inc.*
21 *and its Affiliated Debtors Proposed by the Debtors and Official*
22 *Committee of Unsecured Creditors* [ECF No. 1356] (the “Voting
23 Declaration”);
24

25 ³ Unless otherwise noted herein, capitalized terms not defined in these findings of fact, conclusions of law, and order
26 (collectively, this “Confirmation Order” or this “Order”) shall have the meanings ascribed to such terms in the Plan. The
rules of interpretation set forth in Article I.B of the Plan apply to this Confirmation Order.

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- 1 p. filed, on October 9, 2024, the *Memorandum of Law (A) In Support of*
2 *Confirmation of the Second Modified Second Amended Joint Chapter 11*
3 *Plan of Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors*
4 *Proposed by the Debtors and Official Committee of Unsecured*
5 *Creditors; and (B) In Response to Pending Objections Thereto* [ECF
6 No. 1362] (the “Confirmation Brief”);
7 q. filed, on October 9, 2024, the *Declaration of Lance Miller in Support of*
8 *the Second Modified Second Amended Joint Chapter 11 Plan of*
9 *Liquidation of iCap Enterprises, Inc. and its Affiliated Debtors*
10 *Proposed by the Debtors and Official Committee of Unsecured*
11 *Creditors* [ECF No. 1363] (the “Miller Declaration”);
12 r. filed, on October 9, 2024, the *Notice of Filing Proposed Findings of*
13 *Fact, Conclusions of Law, and Order Confirming the Second Modified*
14 *Second Amended Joint Chapter 11 Plan of Liquidation of iCap*
15 *Enterprises, Inc. and its Affiliated Debtors Proposed by the Debtors and*
16 *Official Committee of Unsecured Creditors* [ECF No. 1364];
17 s. filed, on October 10, 2024, the Supplemental Declaration of Lance
18 *Miller in Support of the Ponzi Findings and Plan Confirmation of the*
19 *Plan* [ECF No. 1370] (the “Miller Ponzi Declaration”);
20 t. filed, on October 10, 2024, the *Declaration of Stanley Ho in Support of*
21 *the Ponzi Findings and Confirmation of the Plan* [ECF No. 1369]
22 (the “Ho Declaration”);
23 u. filed, on October 10, 2024, the *Declaration of Nickisha Haine in*
24 *Support of the Ponzi Findings and Plan Confirmation of the Plan* [ECF
25 No. 1368] (the “Haine Declaration”); **and**
- 26

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- 1 v. filed, on October 10, 2024, the *Supplemental Brief Regarding Ponzi*
2 *Findings in Support of Confirmation of Second Modified Second*
3 *Amended Joint Chapter 11 Plan of Liquidation* [ECF No. 1371]
4 (the “Ponzi Brief”);
5 w. filed, on October 10, 2024, the Debtors’ Motion for Adverse Inferences
6 [u] [ECF No. 1366] (the “Adverse Inference Motion”); and
7 x. filed, on October 10, 2024, the Declaration of John T. Bender in
8 Support of Debtors’ Motion for Adverse Inference [ECF No. 1367] (the
9 “Bender Declaration”).

10 The Bankruptcy Court having:

- 11 a. set October 16, 2024, at 1:00 p.m. (prevailing Pacific Time) as the date
12 and time for the commencement of the Confirmation Hearing, pursuant
13 to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129
14 of the Bankruptcy Code;
- 15 b. reviewed the Disclosure Statement, the Plan, the Plan Supplement, the
16 Confirmation Brief, the Ponzi Brief, the Voting Declaration, the Miller
17 Declaration, the Kinrich Declaration, the Miller Ponzi Declaration, the
18 Ho Declaration, the Haine Declaration, the Adverse Inference Motion,
19 the Bender Declaration, and all pleadings, exhibits, statements,
20 responses, and comments filed in the Chapter 11 Cases regarding
21 confirmation of the Plan (“Confirmation”) and making of the Ponzi
22 Findings (as defined below), including any objections, statements, and
23 reservations of rights filed by parties in interest on the docket of the
24 Chapter 11 Cases;

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- 1 c. held the Confirmation Hearing, including hearing the live testimony of
2 Jeffrey H. Kinrich, Stanley Ho, and Nickisha Haine in support of
3 Confirmation and the making of the Ponzi Findings;
- 4 d. heard the statements and arguments made by counsel with respect to
5 approval of the Plan and Ponzi Findings and Confirmation and the
6 objections, if any, thereto;
- 7 e. considered all oral representations, affidavits, testimony, documents,
8 filings, and other evidence regarding the Plan, the Ponzi Findings, and
9 Confirmation and the objections, if any, thereto;
- 10 f. overruled any and all objections (to the extent not withdrawn) to the
11 Plan, Confirmation, the Plan Supplement, the Ponzi Findings, and this
12 Confirmation Order and all statements and reservations of rights not
13 consensually resolved or withdrawn, unless otherwise indicated; and
- 14 g. taken judicial notice of all pleadings and other documents filed, all
15 orders entered, all evidence proffered or adduced, and all arguments
16 presented, in the Chapter 11 Cases.

17 **NOW THEREFORE**, the Bankruptcy Court having found that notice of the
18 Confirmation Hearing and the opportunity for any party in interest to object to the
19 Plan, Confirmation, and the Ponzi Findings having been adequate and appropriate as
20 to all parties affected or to be affected by the Plan and the transactions and
21 settlements contemplated thereby; and the record of the Chapter 11 Cases and the
22 legal and factual bases set forth in the documents filed in support of Confirmation
23 and presented at the Confirmation Hearing including, but not limited to, the
24 Confirmation Brief, the Voting Declaration, the Miller Declaration, the Kinrich
25 Declaration, the Miller Ponzi Declaration, the Ho Declaration, the Haine Declaration,
26

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1 and—the Ponzi Brief, the Adverse Inference Motion, and the Bender Declaration
2 establish just cause for the relief granted in this Confirmation Order; and after due
3 deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby
4 makes and issues the following findings of fact, conclusions of law, and order:

5 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

6 **IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED, AND**
7 **ORDERED THAT:**

8 **A. Findings of Fact and Conclusions of Law.**

9 1. The findings of fact and conclusions of law set forth in this
10 Confirmation Order and on the record at the Confirmation Hearing constitute the
11 Bankruptcy Court's findings of fact and conclusions of law under Federal Rule of
12 Civil Procedure 52, as made applicable herein by Bankruptcy Rules 7052 and 9014.
13 All findings of fact and conclusions of law announced by the Bankruptcy Court at the
14 Confirmation Hearing in relation to Confirmation and the Ponzi Findings are hereby
15 incorporated into this Confirmation Order to the extent not inconsistent herewith. To
16 the extent any of the following conclusions of law constitute findings of fact, or vice
17 versa, they are adopted as such.

18 **B. Jurisdiction, Venue, and Core Proceeding.**

19 2. The Bankruptcy Court has subject matter jurisdiction over the Chapter
20 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. The Bankruptcy Court has
21 exclusive jurisdiction to determine whether the Plan complies with the applicable
22 provisions of the Bankruptcy Code and should be confirmed. Venue in the
23 Bankruptcy Court was proper as of the Petition Date and remains proper under 28
24 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding under 28
25
26

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1 U.S.C. § 157(b)(2), and the Bankruptcy Court may enter a final order consistent with
2 Article III of the Constitution.

3 **C. Eligibility for Relief.**

4 3. The Debtors were and continue to be entities eligible for relief under
5 section 109 of the Bankruptcy Code.

6 4. The Debtors and the Official Committee of Unsecured Creditors
7 appointed in these Chapter 11 Cases (as amended on November 9, 2023 [ECF No.
8 147], the “Committee” and, together with the Debtors, the “Plan Proponents”) are
9 proper plan proponents under section 1121 of the Bankruptcy Code.

10 **D. Commencement and Joint Administration of the Chapter 11 Cases.**

11 5. On the Petition Date, the Debtors filed voluntary petitions with this
12 Bankruptcy Court for relief under chapter 11 of the Bankruptcy Code. On October 2,
13 2023, the Bankruptcy Court entered an order [ECF No. 9] authorizing the joint
14 administration and procedural consolidation of the Chapter 11 Cases under the lead
15 case *In re iCap Enterprises, Inc.*, Case No. 23-01243-WLH11, in accordance with
16 Bankruptcy Rule 1015(b). On November 16, 2023, the Bankruptcy Court granted the
17 motion for the subsequently filed Debtors, Colpitts Sunset, LLC, CS2 Real Estate
18 Development LLC, and iCap International Investments, LLC to be jointly
19 administered under the lead case: *In re iCap Enterprises, Inc.*, Case No.
20 23-01243-WLH11. *See* ECF No. 164. Since the Petition Date, the Debtors have
21 operated their business and managed their properties as debtors in possession
22 pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the
23 appointment of a trustee or examiner has been made in the Chapter 11 Cases.

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1 E. **Appointment of the Committee.**

2 6. On October 20, 2023, the Office of the United States Trustee for the
3 Eastern District of Washington (the “U.S. Trustee”) appointed the Committee
4 pursuant to section 1102(a)(1) of the Bankruptcy Code [ECF No. 102] and amended
5 such appointment on October 30, 2023 [ECF No. 112].

6 F. **Judicial Notice.**

7 7. The Bankruptcy Court takes judicial notice of (and deems admitted into
8 evidence for purposes of Confirmation) the docket of the Chapter 11 Cases,
9 including all pleadings and other documents on file, all orders entered, all hearing
10 transcripts, and all evidence and arguments made, proffered, or adduced at the
11 hearings held before the Bankruptcy Court during the pendency of the Chapter 11
12 Cases, including the hearing to consider the adequacy of the Disclosure Statement
13 and the Confirmation Hearing.

14 G. **Plan Supplement.**

15 8. On September 18, 2024, the Debtors filed the Plan Supplement. The
16 Plan Supplement complies and is consistent with the Bankruptcy Code and the terms
17 of the Plan, and the filing and notice of the Plan Supplement was good and proper
18 and in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules
19 of the United States Bankruptcy Court for the Eastern District of Washington (the
20 “Local Rules”), the Solicitation Order, and the facts and circumstances of the Chapter
21 11 Cases. No other or further notice is or will be required with respect to the Plan
22 Supplement. All documents included in the Plan Supplement are integral to, part of,
23 and incorporated by reference into the Plan. All Holders of Claims who voted to
24 accept the Plan and who are conclusively presumed to have accepted the Plan are
25 deemed to have accepted the Plan as modified and supplemented by the Plan
26

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1 Supplement and this Confirmation Order. Subject to the terms of the Plan, the
2 Debtors reserve the right to alter, amend, update, or modify the Plan Supplement
3 before the Effective Date subject to compliance with the Bankruptcy Code and the
4 Bankruptcy Rules, *provided*, that no such alteration, amendment, update, or
5 modification shall be inconsistent with the terms of this Confirmation Order or the
6 terms of the Plan.

7 **H. Transmittal and Mailing of Solicitation Materials; Notice.**

8 9. As evidenced by the Solicitation Affidavit and the Voting Declaration,
the Disclosure Statement, the Plan, the Solicitation Order, the ballots for voting on
10 the Plan (the “Ballots”), the notice of the Confirmation Hearing, and the other
11 materials distributed by the Debtors in connection with Confirmation of the Plan
12 (collectively, the “Confirmation Materials”) were transmitted and served in
13 compliance with the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018,
14 the Local Rules, and the procedures set forth in the Solicitation Order.

15 10. Notice of the Confirmation Hearing was appropriate and satisfactory
based upon the circumstances of the Chapter 11 Cases. The transmittal and service of
16 the Confirmation Materials complied with the procedures set forth in the Solicitation
17 Order, were appropriate and satisfactory based upon the circumstances of the Chapter
18 11 Cases, were conducted in good faith, and were in compliance with the provisions
19 of the Bankruptcy Court’s orders, the Bankruptcy Code, the Bankruptcy Rules, the
20 Local Rules, and any other applicable rules, laws, and regulations. All parties
21 required to be given notice of the Confirmation Hearing (including the deadline for
22 filing and serving objections to Confirmation of the Plan) were given due, proper,
23 timely, and adequate notice in accordance with the procedures set forth in the
24
25
26

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1 Solicitation Order. Because such transmittal and service were adequate and
2 sufficient, no other or further notice is necessary or shall be required.
3

4 **I. Voting.**

5 11. Prior to the Confirmation Hearing, the Debtors filed the Voting
6 Declaration. As set forth in the Voting Declaration, the procedures used to solicit
7 votes on the Plan and to tabulate the Ballots were fair and conducted in accordance
8 with the Solicitation Order, the Bankruptcy Code, the Bankruptcy Rules, and all
9 other applicable rules, laws, and regulations.
10

11 12. As set forth in the Plan, Holders of Claims in Classes 3 and 4
12 (collectively, the “Voting Classes”) were eligible to vote on the Plan pursuant to the
13 Voting Procedures. In addition, Holders of Claims in Classes 1 and 2 are unimpaired
14 and conclusively presumed to have accepted the Plan and, therefore, are not entitled
15 to vote to accept or reject the Plan. Holders of Claims in Class 5 and Holders of
16 Equity Interests in Class 6 (collectively, the “Deemed Rejecting Classes”) are
17 impaired under the Plan, ~~are entitled to no recovery under the Plan, and are therefore~~
18 ~~conclusively and have been~~ deemed to ~~have rejected~~reject the Plan. As evidenced by
19 the Voting Declaration, the statements made on the record at the Confirmation
20 Hearing, and this Confirmation Order, Class 3 and Class 4 have voted to accept the
21 Plan in accordance with section 1126(c) of the Bankruptcy Code.
22

23 **J. Good-Faith Solicitation (11 U.S.C. § 1125(e)).**

24 13. Based on the record before the Bankruptcy Court in the Chapter 11
25 Cases, the Plan Proponents and each of their respective accountants, agents, assigns,
26 attorneys, bankers, consultants, directors, employees, executors, financial advisors,
27 investment bankers, managers, members, officers, partners, predecessors, principals,
28 Professional Persons, representatives, and successors of the referenced Person have
29

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1 acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code
2 and in compliance with the applicable provisions of the Bankruptcy Code, the
3 Bankruptcy Rules, the Local Rules, the Solicitation Order, the Voting Procedures,
4 and any other applicable rules, laws, and regulations in connection with all of their
5 respective activities relating to the solicitation of votes on the Plan, their participation
6 in the Chapter 11 Cases, and the activities described in section 1125 of the
7 Bankruptcy Code, and therefore, are entitled to the protections afforded by section
8 1125(e) of the Bankruptcy Code.

9 **K. Burden of Proof.**

10 14. The Plan Proponents as proponents of the Plan, have met their burden of
11 proving the applicable elements of section 1129(a) and (b) of the Bankruptcy Code
12 by a preponderance of the evidence, which is the applicable evidentiary standard for
13 Confirmation. Further, the Plan Proponents have proven the elements of section
14 1129(a) and (b) of the Bankruptcy Code by clear and convincing evidence.

15 **L. Bankruptcy Rule 3016.**

16 15. The Plan is dated and identifies the Plan Proponents as the entities
17 submitting it, thereby satisfying Bankruptcy Rule 3016(a). The Plan Proponents
18 appropriately filed the Disclosure Statement and the Plan with the Bankruptcy Court,
19 thereby satisfying Bankruptcy Rule 3016(b). The Plan and Disclosure Statement
20 describe in specific and conspicuous language all acts and actions to be enjoined and
21 identify the Persons that would be subject to injunctions, thereby satisfying
22 Bankruptcy Rule 3016(c).

23 **M. Objections.**

24 16. To the extent that any objections (including any reservations of rights) to
25 Confirmation of the Plan or the Ponzi Findings have not been withdrawn, waived, or
26

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1 settled prior to entry of this Confirmation Order, or are not otherwise resolved under
2 this Confirmation Order or as stated by the Debtors and/or the Committee on the
3 record of the Confirmation Hearing, all such objections are overruled on the merits.
4 Any resolutions of objections to entry of this Confirmation Order explained on the
5 record at the Confirmation Hearing are hereby incorporated by reference.

6 **N. Conduct of a Ponzi Scheme.**

7 17. The evidence detailed above demonstrates, and the Bankruptcy Court
8 hereby finds (the “Ponzi Findings”), that (i) beginning no later than October 2018
9 (the “Ponzi Start Date”) through the conclusion of the prepetition time period
10 analyzed by the CRO and his advisors (which, for the avoidance of doubt, ended
11 prior to the retention of new counsel and financial advisors by the Debtors in July
12 2023), ~~Christopher Christensen~~the principals operated the iCap enterprise as a Ponzi
13 scheme raising approximately \$230 million from over 1,800 investors in the United
14 States and abroad; (ii) the Ponzi scheme involved the use of funds provided by new
15 investors to the iCap enterprise to make payments to already-existing investors and
16 other creditors; and (iii) the iCap enterprise did not operate as a legitimate
17 profit-making business. *See In re EPD Inv. Co.*, 114 F.4th 1148, 1162–63 (9th Cir.
18 2024).

19 **O. Modifications or Alterations to the Plan.**

20 18. To the extent the Plan has been modified, supplemented, or altered
21 between solicitation and the date of entry of this Confirmation Order (collectively,
22 the “Modifications”), such Modifications made to the Plan constitute clarifications or
23 technical changes, and do not materially and adversely affect or change the treatment
24 of any Claims against, or Equity Interests in, the Debtors and comply in all respects
25 with section 1127 of the Bankruptcy Code. All such Modifications are incorporated
26

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1 by reference herein and approved. Accordingly, pursuant to Bankruptcy Rule 3019,
2 such Modifications, if any, do not require (a) additional or further disclosure with
3 respect to the Modifications under section 1125 of the Bankruptcy Code and/or (b)
4 either resolicitation of votes on the Plan or affording Holders of Claims in the Voting
5 Classes the opportunity to change a previously cast Ballot under section 1126 of the
6 Bankruptcy Code.

7 **P. Compliance with the Requirements of Section 1129 of the Bankruptcy**
8 **Code.**

9 19. As detailed below, the Plan complies with all applicable provisions of
10 section 1129 of the Bankruptcy Code.

11 1. **Compliance With Applicable Provisions of the Bankruptcy Code**
12 **(11 U.S.C. § 1129(a)(1)).**

13 20. The Plan complies with all applicable provisions of the Bankruptcy
14 Code, including sections 1122 and 1123, thereby satisfying section 1129(a)(1) of the
15 Bankruptcy Code.

16 (i) **Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)).**

17 21. The classification of Claims and Equity Interests under the Plan is
18 proper under the Bankruptcy Code. Except with respect to Administrative Expense
19 Claims, Priority Tax Claims, and Supplemental DIP Claims, which need not be
20 classified, Article III of the Plan classifies all Claims against, and Equity Interests in,
21 the Debtors into six (6) separate Classes based on the characteristics of those Claims
22 and Equity Interests. Valid business, factual, and legal reasons exist for the separate
23 classification of the various Classes created under the Plan, the classifications were
24 not promulgated for any improper purpose, and the creation of such Classes does not
25 unfairly discriminate between or among Holders of Claims or Equity Interests. Each
26

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Class of Claims or Equity Interests contains only Claims or Equity Interests that are substantially similar to the other Claims or Equity Interests within that Class. Accordingly, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(ii) Unimpaired Classes (11 U.S.C. § 1123(a)(2)).

22. Article III of the Plan specifies that Claims in Class 1 (Priority Claims) and Class 2 (Secured Claims) are unimpaired under the Plan. Additionally, Administrative Expense Claims, Priority Tax Claims, and Supplemental DIP Claims are not classified under, and are unimpaired by, the Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

(iii) Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).

23. Article III of the Plan specifies that Claims in Class 3 (Investor Claims) and Class 4 (General Unsecured Claims) are impaired and entitled to vote on the Plan, while Claims and Equity Interests in Class 5 (Subordinated Claims) and Class 6 (Equity Interests) are impaired and deemed to reject the Plan. In addition, Article III describes the treatment of the Claims and Equity Interests in such Classes. Accordingly, the Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code.

(iv) No Discrimination (11 U.S.C. § 1123(a)(4)).

24. Article III of the Plan provides for the same treatment of each Claim and Equity Interest in a particular Class, unless the Holder of a particular Claim or Equity Interest agrees to less favorable treatment of such Claim or Equity Interest. Accordingly, the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

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(v) Implementation of the Plan (11 U.S.C. § 1123(a)(5)).

25. Article V and various other provisions of the Plan provide in detail adequate and proper means for the Plan's implementation, including, but not limited to, (as more fully described in Article V of the Plan): (a) the authorization to undertake all corporate actions necessary to effectuate the Plan under Article V.B of the Plan; (b) the dissolution of the Debtors under Article V.B.3 of the Plan; (c) the cancellation of indebtedness under Article V.C of the Plan; (d) the appointment of the iCap Trustees under Article V.D.1 of the Plan; (e) the creation of the iCap Trust under Article V.D.2 of the Plan; (f) the vesting of all iCap Trust Assets in the iCap Trust under Article V.D.3 of the Plan; (g) the sources of cash for Distributions under the Plan under Article V.D.11; (h) the substantive consolidation of the Debtors as provided in Article V.E of the Plan; (i) the preservation of all Causes of Action and Avoidance Actions under Article V.F of the Plan; (j) the effectuating of exit financing documents and an exemption from registration under the Securities Act under Articles V.D.13, and V.G of the Plan, and (k) the abandonment of certain Estate Assets under Article V.H of the Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code.

(vi) Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).

26. The Debtors are not issuing any non-voting equity securities of any corporation, and each of the Debtors will eventually be dissolved under the Plan. Accordingly, section 1123(a)(6) of the Bankruptcy Code is not applicable to the Plan.

(vii) Designation of Directors and Officers (11 U.S.C. § 1123(a)(7)).

27. The Plan provides for the dissolution and winding down of the Debtors' business and appointment of the iCap Trustees as the managers, officers, and representatives of the iCap Trust. Article V.D of the Plan provides for the creation of

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the iCap Trust and for the appointment of the initial iCap Trustees and the initial iCap Trust Supervisory Board to serve in accordance with the terms of the Plan and the iCap Trust Agreement. The iCap Trustees' shared compensation terms are set forth in Article V.D.1 of the Plan. These designations under the Plan are consistent with the interests of ~~the~~ Creditors and Holders of Equity Interests and with public policy. Accordingly, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

(viii) Discretionary Contents of the Plan (11 U.S.C. § 1123(b)).

28. The Plan's discretionary provisions comply with section 1123(b) of the Bankruptcy Code and are not inconsistent with the applicable provisions of the Bankruptcy Code.

(a) Impairment/Unimpairment of Classes (11 U.S.C. § 1123(b)(1)).

29. As contemplated by section 1123(b)(1) of the Bankruptcy Code, Article III of the Plan: (i) impairs Investor Claims (Class 3), General Unsecured Claims (Class 4), Subordinated Claims (Class 5), and Equity Interests (Class 6), and (ii) leaves unimpaired Priority Claims (Class 1) and Secured Claims (Class 2).

(b) Rejection of Executory Contracts and Unexpired Leases
(11 U.S.C. § 1123(b)(2)).

30. Any and all executory contracts and unexpired leases of the Debtors shall be deemed rejected by the Debtors pursuant to the provisions of section 365 of the Bankruptcy Code. The Debtors, in rejecting the contracts and leases under the Plan, utilized their sound business judgment and complied with the Bankruptcy Code, as contemplated by section 1123(b)(2) of the Bankruptcy Code.

(c) Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Equity Interests (11 U.S.C. § 1123(b)(3)).

31. Compromise and Settlement. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distributions, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims or controversies resolved pursuant to the Plan and in these Chapter 11 Cases. Such compromise and settlement is fair, equitable, and reasonable and in the best interests of the Debtors, their Estates, creditors, and parties in interest.

32. Subordinated Claims. The allowance, classification, and treatment of all Allowed Claims and the respective Distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise.

33. Release. The releases (the “Release”) of the Debtors; the Committee and its current and former members (in their capacities as such); the CRO; the DIP Parties; and the preceding’s respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, managers, members, officers, partners, predecessors, principals, Professional Persons, representatives, and successors of the referenced Person; *provided, however,* that the Debtors’ Related Parties will be limited to the following Persons: the directors, officers, attorneys, accountants, consultants, professionals, and employees who (i) are employed by the Debtors on the Effective Date or (ii) whose employment was approved by the Bankruptcy Court (collectively, the “Released”)

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1 Parties"), are essential and critical provisions of the Plan. The Release, which
2 includes by reference each of the related provisions and definitions contained in the
3 Plan, is (a) within the jurisdiction of the Bankruptcy Court pursuant to 28 U.S.C. §
4 1334; (b) fully consensual; (c) in exchange for the good and valuable consideration
5 provided by the Released Parties; (d) a good faith settlement and compromise of such
6 claims; (e) in the best interests of the Debtors, and ~~the~~their Estates; (f) fair,
7 equitable, and reasonable; (g) given and made after due notice and opportunity for a
8 hearing; and (h) a bar to any of the Releasing Parties asserting any released claim
9 against any of the Released Parties.

10 34. The Release was a necessary inducement to the participation of the
11 Debtors' stakeholders in the negotiations and compromises that led to the Plan.
12 Specifically, the Released Parties, individually and collectively, made significant
13 contributions to the Chapter 11 Cases, including funding the Chapter 11 Cases, and
14 otherwise actively supporting the negotiation and prosecution of the Plan. The
15 Release therefore appropriately offers protection to parties who actively and
16 constructively participated in and contributed to the Debtors' Chapter 11 Cases and
17 without whom Confirmation could not have been achieved.

18 35. The scope of the Release is appropriately tailored under the facts and
19 circumstances of the Chapter 11 Cases, and parties received due and adequate notice
20 of the Release. In light of, among other things, the value provided by the Released
21 Parties to the Debtors' Estates and the critical nature of the Release to the Plan, the
22 Release is approved.

23 36. Exculpation. The exculpation provision set forth in Article X.H of the
24 Plan (the "Exculpation") is approved. The Exculpation is appropriate under
25 applicable law because it was proposed in good faith, was formulated following
26

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1 extensive good faith, arm's length negotiations with key constituents, is a key
2 element of the Plan, and is appropriately limited in scope, as it will have no effect of
3 the liability of any Person or Entity that results from any such act or omission that is
4 determined by a Final Order to have constituted fraud, willful misconduct, gross
5 negligence, or malpractice. The Exculpated Parties have participated in compliance
6 with the applicable provisions of the Bankruptcy Code with regard to the solicitation
7 of, and distributions under, the Plan, and therefore, are not, and on account of such
8 distributions shall not be, liable at any time for the violation of any applicable law,
9 rule, or regulation governing the solicitation of acceptances or rejections of the Plan
10 or distributions made pursuant to the Plan. Accordingly, the Exculpation is approved.
11

12 37. Injunctions. The injunctive provisions set forth in Articles X.I and X.J of
13 the Plan (collectively, the "Injunctions") are essential to the Plan and are necessary to
14 implement the Plan and to preserve and enforce the Release and the Exculpation in
15 Article X of the Plan. Such Injunctions are appropriately tailored to achieve those
16 purposes. Accordingly, the Injunctions are approved.

17 38. Preservation of Estate Causes of Action. The provisions regarding the
18 preservation of all of the Debtors' and Estates' Causes of Action in the Plan, Causes
19 of Action that are Contributed Claims (whether existing as of the Petition Date or
20 thereafter arising), and all Avoidance Actions, including Article V.F of the Plan, are
21 appropriate and are in the best interests of the Debtors, their respective Estates, and
22 their ~~creditors~~Creditors. Without in any way limiting the iCap Trust's and the iCap
23 Trustees' rights to pursue claims against third parties, Article V.F.3 provides
24 illustrative categories of claims that are preserved under the Plan and will be
25 transferred and conveyed to the iCap Trust as provided for in the Plan and as
26 authorized by this Confirmation Order.

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(d) Additional Plan Provisions (11 U.S.C. § 1123(b)(6)).

39. The Plan contains other appropriate provisions that are not inconsistent with the applicable provisions of the Bankruptcy Code, as contemplated by section 1123(b)(6) of the Bankruptcy Code.

2. The Plan Proponents' Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(2)).

40. As detailed below, the Plan Proponents have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code.

- (i) The Debtors and the Committee, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code, as required by section 1129(a)(2) of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, 1126, 1127, 1128, and 1129 of the Bankruptcy Code, the Bankruptcy Rules, including Bankruptcy Rules 3016, 3017, 3018, and 3019, the Local Rules, the Solicitation Order, and any applicable nonbankruptcy laws, rules, and regulations in transmitting the Disclosure Statement, the Plan, the Plan Supplement, and any related documents and notices.
 - (ii) The votes to accept or reject the Plan were solicited by the Plan Proponents and their agents after the Bankruptcy Court approved the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code and entered the Solicitation Order.
 - (iii) The Plan Proponents and their agents (a) have solicited and tabulated votes on the Plan and have participated in the activities described in section 1125 of the Bankruptcy Code fairly and in good faith within the meaning of section 1125(e) of the Bankruptcy Code, and in a manner consistent with the applicable provisions of the Solicitation Order, the Disclosure Statement, the Plan, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws, and regulations, and (b) are entitled to the protections afforded

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1 by section 1125(e) of the Bankruptcy Code and the Exculpation
2 provision set forth in Article X.H of the Plan.

3 (iv) The Plan Proponents and their agents and professionals have
4 participated in good faith and in compliance with the applicable
5 provisions of the Bankruptcy Code with regard to the offering,
6 issuance, and distribution of recoveries under the Plan and, therefore,
7 are not, and on account of such distributions will not be, liable at any
8 time for the violation of any applicable law, rule, or regulation
governing the solicitation of acceptances or rejections of the Plan or
distributions made thereunder, so long as such distributions are made
consistent with and pursuant to the Plan.
9

10 **3. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)).**

11 41. The Plan (including all documents and agreements necessary to
12 effectuate the Plan) and the transactions and settlements contemplated in the Plan
13 have been proposed in good faith and not by any means forbidden by law, with the
14 legitimate and honest purpose of maximizing recoveries to parties in interest. In
15 determining that the Plan has been proposed in good faith, the Bankruptcy Court has
16 examined the totality of the circumstances surrounding the filing of the Chapter 11
17 Cases, the Plan itself, and the process leading to its formulation. The Plan
18 Proponents' good faith is evident from the facts and record of the Chapter 11 Cases,
19 the Disclosure Statement, the Plan, the record of the Confirmation Hearing, the
20 Miller Declaration, and all other proceedings held in the Chapter 11 Cases. The Plan
21 is the product of arm's length negotiations between the Debtors, the Committee, and
22 other parties in interest. The Plan itself and the process leading to its formulation
23 provide independent evidence of the Debtors' good faith, serve the public interest,
24 and assure fair treatment of Holders of Claims and Equity Interests. Consistent with
25 the overriding purpose of chapter 11, the Debtors commenced the Chapter 11 Cases,
26 and proposed the Plan, with the legitimate purpose of maximizing the value of the

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1 ultimate recoveries to all creditor groups on a fair and equitable basis. The Plan's
2 classification, indemnification, exculpation, release, and injunction provisions were
3 negotiated in good faith and at arm's length, are consistent with sections 105, 1122,
4 1123, 1129, and 1142 of the Bankruptcy Code, and are each necessary for
5 implementation of the Plan.

6 42. The Plan Proponents and each of the constituents who negotiated the
7 Plan, including, but not limited to, each of their respective accountants, agents,
8 assigns, attorneys, bankers, consultants, directors, employees, executors, financial
9 advisors, investment bankers, managers, members, officers, partners, predecessors,
10 principals, Professional Persons, representatives, and successors of the referenced
11 Person (a) acted in good faith in negotiating, formulating, and proposing the Plan and
12 the agreements, compromises, settlements, transactions, transfers, and documentation
13 contemplated by the Plan and (b) will be acting in good faith in proceeding to
14 (i) consummate the Plan and the agreements, compromises, settlements, transactions,
15 transfers, and documentation contemplated by the Plan and this Confirmation Order
16 and (ii) take any actions authorized and directed or contemplated by this
17 Confirmation Order. Accordingly, the Plan satisfies section 1129(a)(3) of the
18 Bankruptcy Code.

19 4. **Payment for Services or Costs and Expenses (11 U.S.C. §**
20 **1129(a)(4)).**

21 43. The procedures set forth in the Plan for the Bankruptcy Court's review
22 and ultimate determination of the fees, costs, and expenses to be paid by the Debtors,
23 or the iCap Trustees, as applicable, in connection with the Chapter 11 Cases, or in
24 connection with the Plan and incident to the Chapter 11 Cases, satisfy the objectives
25 of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.
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1 **5. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).**

2 44. Article V.B.2 of the Plan satisfies the requirements of section 1129(a)(5)
3 of the Bankruptcy Code because the Debtors have disclosed that, on the Effective
4 Date, each of the Debtors' existing directors and officers including, without
5 limitation, the CRO, shall be terminated automatically without the need for any
6 further action and without the need for any corporate or limited liability company
7 filings, and they shall have no ongoing rights against or obligations to the Debtors or
8 the Estates, including under any applicable prepetition agreements (all of which will
9 be deemed terminated); *provided, however,* that the Debtors' indemnification and
10 defense obligations under any such agreements shall survive the foregoing
11 termination and remain unaltered by the Plan. On the Effective Date, the iCap
12 Trustees shall succeed to all such powers as would have been applicable to the
13 Debtors' officers and directors in respect of all iCap Trust Assets. The Debtors have
14 also disclosed that the CRO, Lance Miller, and Seth Freeman will serve as the initial
15 iCap Trustees and the nature of their compensation for their role as the iCap Trustees.
16 The appointment of the iCap Trustees was, is, and will be consistent with the
17 interests of Holders of Claims and Equity Interests and public policy. Accordingly,
18 the Plan satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code.

19 **6. No Rate Changes (11 U.S.C. § 1129(a)(6)).**

20 45. The Plan proposes no rate change subject to the jurisdiction of any
21 governmental regulatory commission. Thus, section 1129(a)(6) of the Bankruptcy
22 Code is not applicable.

23 **7. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).**

24 46. The Plan satisfies the requirements of section 1129(a)(7) of the
25 Bankruptcy Code. The evidence in support of the Plan that was proffered or adduced
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1 at the Confirmation Hearing, including the Miller Declaration, the liquidation
2 analysis attached to the Disclosure Statement as Exhibit B, the recovery analysis
3 attached to the Disclosure Statement as Exhibit C, and the facts and circumstances of
4 the Chapter 11 Cases: (a) is reasonable, persuasive, credible, and accurate as of the
5 dates such evidence was prepared, presented, or proffered; (b) utilizes reasonable and
6 appropriate methodologies and assumptions; (c) has not been controverted by other
7 evidence; (d) provides a reasonable estimate of the liquidation values of the Debtors
8 upon hypothetical conversion to cases under ~~Chapter~~chapter 7 of the Bankruptcy
9 Code; and (e) establishes that Holders of Allowed Claims or Equity Interests will
10 recover at least as much under the Plan on account of such Claim or Equity Interest,
11 as of the Effective Date, as such Holder would receive if the Debtors were liquidated,
12 on the Effective Date, under chapter 7 of the Bankruptcy Code.

13 **8. Acceptance of the Plan by Certain Classes (11 U.S.C. § 1129(a)(8)).**

14 47. Classes 1 and 2 are each Classes of unimpaired Claims that are
15 conclusively presumed to have accepted the Plan under section 1126(f) of the
16 Bankruptcy Code. As set forth in the Voting Declaration, Classes 3 and 4 have voted
17 to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code. The
18 Deemed Rejecting Classes are deemed to have rejected the Plan pursuant to section
19 1126(g) of the Bankruptcy Code. Although section 1129(a)(8) of the Bankruptcy
20 Code is not satisfied with respect to the Deemed Rejecting Classes, the Plan may
21 nevertheless be confirmed because the Plan satisfies section 1129(b) of the
22 Bankruptcy Code with respect to such Classes.

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1 **9. Treatment of Claims Entitled to Priority Under Section 507(a) of the**
2 **Bankruptcy Code (11 U.S.C. § 1129(a)(9)).**

3 48. The treatment of Administrative Expense Claims and Priority Tax
4 Claims under Article III.A the Plan, and of Priority Claims under Article III.B.1 of
5 the Plan, satisfies the requirements of, and complies in all respects with, section
6 1129(a)(9) of the Bankruptcy Code. Notwithstanding anything to the contrary set
7 forth in the Plan, the Debtors agree that any reference to consent to treatment that
8 differs from the treatment permitted by section 1129(a)(9) of the Bankruptcy Code
9 shall require actual consent and failure to object to Confirmation of the Plan shall not
10 be deemed to be consent to receive treatment by a Holder of a Claim other than as
11 provided for under section 1129(a)(9) of the Bankruptcy Code.

12 **10. Acceptance of the Plan by at Least One Impaired Class**
13 **(11. U.S.C. § 1129(a)(10)).**

14 49. All Voting Classes are impaired and, as indicated in the Voting
15 Declaration and this Confirmation Order, Classes 3 and 4 have voted to accept the
16 Plan by the requisite number and amount of Claims, determined without including
17 any acceptance of the Plan by any insider (as that term is defined in section 101(31)
18 of the Bankruptcy Code). Accordingly, the Plan satisfies the requirements of section
19 1129(a)(10) of the Bankruptcy Code.

20 **11. Feasibility (11 U.S.C. § 1129(a)(11)).**

21 50. The Plan proposes a liquidation of all Estate Assets and the distribution
22 of Cash and/or iCap Trust Interests to Holders of Allowed Claims in accordance with
23 the priority scheme of the Bankruptcy Code and the terms of the Plan, thereby
24 satisfying section 1129(a)(11) of the Bankruptcy Code.

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1 **12. Payment of Bankruptcy Fees (11 U.S.C. § 1129(a)(12)).**

2 51. The Plan requires that all fees payable by the Debtors pursuant to section
3 1930 of title 28 of the United States Code have been paid or will be paid, thereby
4 satisfying section 1129(a)(12) of the Bankruptcy Code.

5 **13. Non-Applicability of Certain Bankruptcy Code Sections**
6 **(11 U.S.C. §§ 1129(a)(13), (14), (15), and (16)).**

7 52. The Debtors (a) do not provide or pay any “retiree benefits,” as such
8 term is defined in section 1114 of the Bankruptcy Code, (b) are not obligated to pay
9 any domestic support obligations, (c) are not individuals, are (d) are not a corporation
10 or trust that is not a moneyed, business, or commercial corporation or trust. Sections
11 1129(a)(13), 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code are,
12 therefore, inapplicable to the Chapter 11 Cases.

13 **14. Confirmation of the Plan Over Non-Acceptance of Impaired Classes.**
14 **(11 U.S.C. § 1129(b)).**

15 53. The Plan satisfies the requirements of section 1129(b) of the Bankruptcy
16 Code. Notwithstanding the fact that the Deemed Rejecting Classes have not accepted
17 the Plan, the Plan may be confirmed because the evidence proffered or adduced at the
18 Confirmation Hearing (a) is reasonable, persuasive, credible, and accurate as of the
19 dates such evidence was prepared, presented, or proffered, (b) utilizes reasonable and
20 appropriate methodologies and assumptions, (c) has not been controverted by other
21 evidence, and (d) establishes that the Plan does not discriminate unfairly, and is fair
22 and equitable, with respect to Classes 5 and 6, as required by sections 1129(b)(1) and
23 (b)(2) of the Bankruptcy Code, because (i) no Class of Claims or Equity Interests that
24 is junior to the Claims and Equity Interests in Classes 5 and 6 will receive
25 distributions or retain any property under the Plan on account of such junior Claim or
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1 Equity Interest and (ii) the Claims and Equity Interests in Classes 5 and 6 are
2 “dissimilar” from the Claims and Equity Interests in all other Classes and the Plan
3 does not provide any distributions to similarly situated Holders of Claims or Equity
4 Interests.

5 **15. Only One Plan (11 U.S.C. § 1129(c)).**

6 54. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy
7 Code. The Plan (including previous versions thereof) is the only chapter 11 plan filed
8 in the Chapter 11 Cases.

9 **16. Principal Purpose of the Plan (11 U.S.C. § 1129(d)).**

10 55. The Plan satisfies the requirements of section 1129(d) of the Bankruptcy
11 Code. The principal purpose of the Plan is not the avoidance of taxes or the
12 avoidance of the application of section 5 of the Securities Act of 1933, and there has
13 been no filing by any governmental agency asserting such avoidance.

14 **17. Small Business Case (11 U.S.C. § 1129(e)).**

15 56. The Chapter 11 Cases are not a “small business case,” as that term is
16 defined in the Bankruptcy Code, and, accordingly, section 1129(e) of the Bankruptcy
17 Code is not applicable.

18 **Q. Satisfaction of Confirmation Requirements.**

19 57. Based upon the foregoing, the Plan Proponents have met their burden of
20 proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a
21 preponderance of the evidence, the Plan satisfies all the requirements for
22 Confirmation set forth in section 1129 of the Bankruptcy Code, and the Plan should
23 be confirmed.

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1 R. **Substantive Consolidation.**

2 58. All of the Debtors, other than the Excluded Debtors with respect to
3 Claims in Classes 2B and 2C, shall be substantively consolidated pursuant to sections
4 105(a), 541, 1123, and 1129 of the Bankruptcy Code, as set forth in the Plan, and
5 such substantive consolidation is fair, equitable, reasonable and in the best interests
6 of the Debtors, their Estates and the Holders of Claims and Equity Interests.
7 Although Creditors generally may not have treated all of the Debtors as one legal
8 entity, there is substantial commingling of assets and liabilities among the Debtors.
9
10 See *In re Bonham*, 229 F.3d 750, 764-65 (9th Cir. 2000). It is impossible to trace the
11 flow of funds with respect to the Debtors' prepetition transactions since the majority
12 of the proceeds received were commingled and distributed without regard to
13 corporate formalities, which entanglement warrants substantive consolidation of all
14 the Debtors. Moreover, the Chapter 11 Cases are unique—the perpetration of a
15 fraudulent scheme by a common corporate enterprise, one that in the process did not
16 keep accurate records of the multitude of intercompany transactions that have
17 occurred, making an unscrambling of the enterprise's accounts impossible—but that
18 has justified substantive consolidation in other cases. See, e.g., *In re Bonham*, 229
19 F.3d at 764-65 (consolidating entities in Ponzi scheme case); *In re DBSI, Inc.*, Case
20 No. 08-12687, ECF No. 5924 (Bankr. D. Del. Jan. 19, 2010) (same); *In re Bernard L.*
21 *Madoff Investment Securities LLC*, No. 08-01789, ECF No. 252 (Bankr. S.D.N.Y.
22 June 10, 2009) (same). Substantive consolidation results in equitable treatment to all
23 creditors and was not used to disadvantage a particular creditor group. Accordingly,
24 the requirements of substantive consolidation are satisfied and the substantive
25 consolidation of the Debtors, other than the Excluded Debtors with respect to Claims
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1 in Classes 2B and 2C, in accordance with the Plan is hereby approved. *See In re*
2 *Bonham*, 229 F.3d at 764-65; *In re Owens Corning*, 419 F.3d 195 (3d Cir. 2005).

3 **S. Good Faith.**

4 ~~59. The Plan Proponents have proposed the Plan in good faith, with the~~
5 ~~legitimate and honest purpose of maximizing the value of the Debtors' Estates for the~~
6 ~~benefit of their stakeholders through, among other things, the establishment of the~~
7 ~~iCap Trust. The Plan Proponents and the Released Parties have been, are, and will~~
8 ~~continue to act in good faith if they proceed to (a) consummate the Plan and the~~
9 ~~agreements, settlements, transactions, and transfers contemplated thereby and (b)~~
10 ~~take the actions authorized and directed or contemplated by this Confirmation Order.~~
11 Therefore, the Plan has been proposed in good faith to achieve a result consistent
12 with the objectives and purposes of the Bankruptcy Code.

13 **S. T. Disclosure of Facts.**

14 ~~59. 60.~~ The Debtors have disclosed all material facts, to the extent
15 applicable, regarding the Plan and the adoption, execution, and implementation of the
16 other matters provided for under the Plan, including, without limitation, (a) the
17 establishment of the iCap Trust and the execution and entry into the iCap Trust
18 Agreement; (b) the identity of the iCap Trustees and their proposed compensation;
19 (c) the adoption and making of the Ponzi Findings; (d) the method and manner of
20 Distributions under the Plan; (e) the winding down of the Debtors' business and
21 dissolution of the Debtors; (f) the exemption under section 1146(a) of the
22 Bankruptcy Code; (g) the Releases, Exculpation, Injunctions, and preservation of
23 Debtors' or Estates' Causes of Action and Avoidance Actions; and (h) the adoption,
24 execution, and delivery of all contracts, leases, instruments, releases, and other
25 agreements related to any of the foregoing.
26

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1 **T. U.iCap Trust Agreement.**

2 **60.** ~~61.~~ The iCap Trust Agreement, and the iCap Trust to which it relates,
3 are, individually and collectively, essential elements of the Plan, and entry into the
4 iCap Trust Agreement is in the best interests of the Debtors, their Estates, and the
5 Holders of Claims and Equity Interests and is necessary and appropriate for
6 consummation of the Plan. The Debtors have exercised sound business judgment in
7 determining to enter into the iCap Trust Agreement and have provided adequate
8 notice thereof. The terms of the iCap Trust Agreement set forth in the Plan
9 Supplement have been negotiated in good faith and at arm's length among the
10 Debtors and the Committee and are deemed to have been made in good faith and for
11 legitimate business purposes. The terms and conditions of the iCap Trust Agreement
12 set forth in the Plan Supplement are fair and reasonable and are approved.

13 **U. V.Exit Financing.**

14 **61.** ~~62.~~ The terms and conditions of the Exit Financing (which term, for the
15 avoidance of doubt, shall include the (1) Exit Loan and Security Agreement with
16 Keith Holdings LLC and iCap DIP Finance Group LLC, which contemplates a
17 commitment fee of \$150,000.00 to be paid by the iCap Trust upon approval of the
18 Exit Financing; (2) Exit Loan and Security Agreement with Redmond Funding
19 Group, LLC; and (3) Exit Loan and Security Agreement with Tritalent Funding
20 Group, LLC (collectively, the "Exit Financing Documents") and all of the
21 transaction documents governing the Exit Financing and the fees to be paid
22 thereunder (a) are fair and reasonable, (b) reflect the Debtors' exercise of prudent
23 judgment, (c) are supported by reasonably equivalent value and fair consideration, (c)
24 are proposed in good faith, (d) are critical to the success and feasibility of the Plan,
25 (e) are in the best interests of the Debtors, their Estates, and their ~~creditors~~Creditors,

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1 and (f) were negotiated in good faith, without fraud or collusion and at arm's length
2 among the parties, without the intent to hinder, delay, or defraud any ~~creditor~~Creditor
3 of the Debtors.

4 **V. W. Likelihood of Satisfaction of Conditions Precedent to the Effective**
5 **Date.**

6 62. ~~63.~~ Without limiting or modifying the rights of the Debtors, each of the
7 conditions precedent to the Effective Date, as set forth in Article IX.A of the Plan,
8 has been or is reasonably likely to be satisfied or waived in accordance with Article
9 IX.B of the Plan.

10 **W. X. Implementation.**

11 63. ~~64.~~ All documents necessary to implement the Plan, including those
12 contained in the Plan Supplement, and all other relevant and necessary documents
13 (including, without limitation, the iCap Trust Agreement and any documents and
14 ~~agreement~~agreements with respect to the Exit Financing) have been negotiated in
15 good faith and at arm's length, are in the best interests of the Debtors, and shall, upon
16 completion of documentation and execution, and in accordance with the terms and
17 conditions thereof, be valid, binding, and enforceable documents and agreements not
18 in conflict with any federal, state, or local law. The Debtors have exercised
19 reasonable business judgment in determining which agreements to enter into and
20 have provided sufficient and adequate notice of such documents and agreements. The
21 terms and conditions of such documents and agreements have been and are
22 continuing to be negotiated in good faith, at arm's length, are fair and reasonable,
23 and are approved. The Debtors are authorized, without any further notice to or action,
24 order, or approval of the Bankruptcy Court to finalize and execute and deliver all
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1 agreements, documents, instruments, and certificates relating thereto and perform
2 their obligations thereunder in accordance with the Plan.

3 **X. Y. Retention of Jurisdiction.**

4 64. ~~65.~~ Pursuant to sections 105(c) and 1142 of the Bankruptcy Code, and
5 notwithstanding the entry of this Confirmation Order or the occurrence of the
6 Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all
7 matters arising out of, and related to, the Plan, this Confirmation Order, and the
8 Chapter 11 Cases, to the fullest extent permitted by law, as set forth in Article XIII of
9 the Plan.

10 **Y. Z. Waiver of Stay.**

11 65. ~~66.~~ Given the facts and circumstances of the Chapter 11 Cases, it is
12 appropriate that the 14-day stay imposed by Bankruptcy Rules 3020(e) and 7062(a)
13 be waived.

14 **ORDER**

15 **BASED ON THE FOREGOING FINDINGS OF FACTS AND
16 CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND
17 DECREED, THAT:**

18 **A. Approval of the Plan.**

19 66. ~~67.~~ The Plan, attached hereto as **Exhibit A**, is approved in its entirety
20 and confirmed under section 1129 of the Bankruptcy Code. The terms of the Plan,
21 including the Plan Supplement, are incorporated by reference into and are an integral
22 part of this Confirmation Order (whether or not such terms are expressly referenced
23 or described herein). The documents contained in the Plan Supplement, and any
24 amendments, modifications, and supplements thereto, and all documents and
25 agreements related thereto (including all exhibits and attachments thereto), and the
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1 execution, delivery, and performance thereof, are authorized and approved as
2 finalized, executed, and delivered. The failure to include or refer to any particular
3 article, section, or provision of the Plan, the Plan Supplement, or any related
4 document or exhibit does not impair the effectiveness of that article, section, or
5 provision; it being the intent of the Bankruptcy Court that the Plan, the Plan
6 Supplement, and any related document or exhibit are approved and confirmed in their
7 entirety. The terms of the Plan, the Plan Supplement, all exhibits thereto, and all
8 other relevant and necessary documents shall be effective and binding as of the
9 Effective Date.

10 **B. Objections.**

11 67. 68. To the extent that any objections (including any reservation of
12 rights) to Confirmation have not been withdrawn, waived, or settled prior to entry of
13 this Confirmation Order, or otherwise resolved as stated by the Debtors on the record
14 of the Confirmation Hearing, all such objections are denied and overruled on the
15 merits and in their entirety.

16 **C. Approval of Plan Modifications.**

17 68. 69. The Modifications are approved in all respects pursuant to sections
18 1125 and 1127 of the Bankruptcy Code and Bankruptcy Rule 3019(a). The Plan (as
19 modified by this Confirmation Order) is deemed accepted by all Holders of Claims
20 that voted to accept or were deemed to have accepted any prior iteration of the Plan,
21 and no other or further disclosure or solicitation of votes is required. For the
22 avoidance of doubt, all references to the Plan herein shall mean the Plan as modified
23 by the Modifications.

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1 D. **Amendment of the Plan.**

2 69. ~~70.~~ Subject to the requirements of section 1127 of the Bankruptcy Code,
3 Bankruptcy Rule 3019, and, to the extent applicable, sections 1122, 1123, and 1125
4 of the Bankruptcy Code, the Debtors may alter, amend, or modify the Plan at any
5 time prior to the Effective Date. Holders of Claims that have accepted the Plan shall
6 be deemed to have accepted the Plan, as altered, amended, or modified, if the
7 proposed alteration, amendment, or modification complies with the requirements of
8 this paragraph ~~70~~69 and Article XII of the Plan, and does not materially and
9 adversely change the treatment of the Claim of such Holder; *provided, however,* that
10 any Holders of Claims that were deemed to have accepted the Plan because such
11 Claims were unimpaired shall continue to be deemed to have accepted the Plan only
12 if, after giving effect to such amendment or modification, such Claims continue to be
13 unimpaired.

14 E. **Plan Classification.**

15 70. ~~71.~~ The Plan's classification scheme is approved. The terms of the Plan
16 shall solely govern the classification of Claims and Equity Interests for purposes of
17 the distributions to be made thereunder. The classifications set forth on the Ballots
18 tendered to or returned by the Holders of Claims in connection with voting on the
19 Plan: (a) were set forth thereon solely for purposes of voting to accept or reject the
20 Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or
21 otherwise affect, the actual classification of Claims under the Plan for distribution
22 purposes; (c) may not be relied upon by any Holder of a Claim as representing the
23 actual classification of such Claim under the Plan for distribution purposes; and (d)
24 shall not be binding on the Debtors or the iCap Trust except for voting purposes.

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1 F. **Information Requests to Investors.**

2 71. ~~72.~~ Upon request, Investors must, within twenty-one (21) calendar days
3 of receipt of such request, respond to requests for information by the iCap Trustees
4 with respect to Investor Claims. Failure to respond to a request for information may
5 subject the Investor's Claim to disallowance in the iCap Trustees' full discretion,
6 subject to the following:

- 7 a. Any request to an Investor for information pursuant to this
8 paragraph shall include a clear statement that failure to provide
9 the information may subject the Investor's Claim to disallowance
10 in the iCap Trustees' full discretion;
- 11 b. The iCap Trustees may provide additional time to respond, if
12 reasonably necessary and requested within the twenty-one (21)
13 day period;
- 14 c. An Investor shall have the right to seek Bankruptcy Court
15 determination on the reasonableness of the information requested;
16 *provided, however,* that in the event the court determines that the
17 request is reasonable, the Investor's Claim shall be subject to
18 reduction in an amount sufficient (as determined by the iCap
19 Trustees) to recover attorneys fees and costs incurred by the iCap
20 Trust in addressing the request for determination;;
- 21 d. If a timely determination is requested, the Investor shall not be
22 subject to forfeiture ~~if~~of the Investor's Claim until a resolution by
23 the Bankruptcy Court and a reasonable amount of time to comply
24 with the determination of the Bankruptcy Court;; and

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e. Any Personally Identifiable Information, as that term is defined in section 101(41A) of the Bankruptcy Code, provided by an Investor to the iCap Trust shall be safeguarded and held confidential in accordance with reasonable commercial standards.

G. Claims Paid by Third Parties.

72. ~~73.~~ Except as otherwise set forth herein or in the Plan, and specifically Article III.C.2.a of the Plan, governing payments received by an Investor on account of Individual Investor-Specific Claims, to the extent a Holder of a Claim receives a Distribution on account of such Claim under the Plan and receives payment from a party that is not a Debtor or the iCap Trustees on account of such Claim, such Holder shall, within thirty (30) days of receipt thereof, repay or return the Distribution to the applicable Debtor or the iCap Trustees, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such Distribution under the Plan. The failure of such Holder to timely repay or return such excess Distribution shall result in the Holder owing the iCap Trust annualized interest at the Federal Judgment Rate, as in effect as of the Petition Date, on such amount owed for each Business Day after the thirty-day grace period specified above until the amount is repaid. For the avoidance of doubt, only prior distributions are required to be returned or paid to the iCap Trust, and no forfeiture of an Investor's Claim shall result unless the Investor fails to comply with Article III.C.2.a of the Plan.

H. Comprehensive Settlement of Claims and Controversies.

73. ~~74.~~ Pursuant to sections 1123(a)(5), 1123(b)(3), and 1123(b)(6) of the Bankruptcy Code, as well as Bankruptcy Rule 9019, and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan

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1 will constitute a good faith compromise and settlement of all claims and
2 controversies relating to the rights that a Holder of a Claim or an Equity Interest may
3 have against any Debtor with respect to any Claim, Equity Interest, or any
4 Distribution on account thereof, as well as of all potential Intercompany Claims,
5 Intercompany Liens, and Causes of Action against any Debtor. The entry of this
6 Confirmation Order will constitute the Bankruptcy Court's approval, as of the
7 Effective Date, of the compromise or settlement of all such claims or controversies
8 and the Bankruptcy Court's finding that all such compromises or settlements are (i)
9 in the best interest of the Debtors, the Estates, and their respective property and
10 stakeholders; and (ii) fair, equitable, and reasonable.

11 74. 75. The entry of this Confirmation Order constitutes Ponzi Findings that
12 (i) beginning no later than the Ponzi Start Date through the conclusion of the
13 prepetition time period analyzed by the CRO and his advisors (which, for the
14 avoidance of doubt, ended prior to the retention of new counsel and financial
15 advisors by the Debtors in July 2023), the iCap enterprise operated as a Ponzi scheme
16 raising approximately \$230 million from over 1,800 investors in the United States
17 and abroad; and (ii) the Ponzi scheme involved the payment of purported returns to
18 existing investors from funds contributed by new investors. The Ponzi Findings are
19 not binding on any other court or governmental or regulatory authority. The Ponzi
20 Findings contained in this Confirmation Order constitute and satisfy the Ponzi
21 finding condition set forth in the Exit Financing.

22 75. 76. Any Ponzi Finding by the Bankruptcy Court, including any finding
23 of a Ponzi scheme or a Ponzi Start Date, shall not be preclusive nor binding on
24 Umpqua Bank in any other court or governmental or regulatory authority, and neither
25 the Debtors, the Committee, the iCap Trust, nor the iCap Trustees will seek to
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1 enforce the same against Umpqua Bank in this Bankruptcy Court. In addition, to the
2 extent the Debtors are substantively consolidated as of the Effective Date, such
3 substantive consolidation shall not affect or diminish any defenses or rights of
4 Umpqua Bank with respect to any claims associated with the Debtors or any
5 individual Debtor, including any deposit accounts held by a Debtor at Umpqua Bank.
6 The Plan Proponents acknowledge and agree that: Umpqua Bank is not a Creditor or
7 party to this proceeding, that Umpqua Bank has not had a full or fair opportunity to
8 litigate any Ponzi Findings to a final order or judgment, and that no claims have been
9 specifically asserted against Umpqua Bank, or otherwise adjudicated in any manner
10 in relation to the Plan or through Confirmation of the Plan.

11 76. 77. In accordance with the terms of the *Stipulation Resolving*
12 *Christopher Christensen's Objection to Confirmation of the Plan* [ECF No. 1266]
13 (the "Christensen Stipulation"), any finding of fact or conclusion of law by the
14 Bankruptcy Court or any appellate court in connection with the confirmation of the
15 Plan relating to any finding of a Ponzi scheme, a Ponzi start date, or any fraud or
16 misconduct by or on behalf of the Debtors or Christensen shall have no preclusive
17 effect on Christensen and shall not be binding on Christensen in any future litigation
18 or proceeding against Christensen in any tribunal. Neither the Debtors, the
19 Committee, the iCap Trust, nor the iCap Trustees will pursue any action in the
20 Bankruptcy Court against Christensen, nor seek to enforce any such findings against
21 Christensen or contend that Christensen is bound by any such findings; *provided* that,
22 in the event Christensen files a motion or complaint in the Bankruptcy Court
23 asserting a monetary claim or seeking affirmative recovery of funds from the
24 Debtors' Estates or the iCap Trust based on any activity that occurred before the date
25 of the Christensen Stipulation, the Debtors, the Committee, the iCap Trust, or the
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1 iCap Trustees (as applicable) will be permitted to respond to such action and seek to
2 enforce the findings.

3 77. ~~78.~~ In accordance with the *Stipulation Resolving Wilmington's*
4 *Objection to Confirmation of the Plan* [ECF No. 1338], any finding of fact or
5 conclusion of law by the Bankruptcy Court or any appellate court in connection with
6 the confirmation of the Plan relating to any finding of a Ponzi scheme (inclusive of
7 the Ponzi Finding), a Ponzi start date, any fraud or misconduct by or on behalf of the
8 Debtors, or any element of any claim or cause of action asserted against Wilmington,
9 shall have no preclusive effect on Wilmington and shall not be binding on
10 Wilmington in any future litigation or proceeding against Wilmington in any tribunal
11 (including the pending Wilmington Adversary Proceeding). Neither the Debtors, the
12 Committee, the iCap Trust, nor the iCap Trustees will seek to enforce any such
13 findings against Wilmington or contend that Wilmington is bound by any such
14 findings. Any and all rights and defenses of Wilmington to defend the claims and
15 causes of action against it are preserved.

16 78. ~~79.~~ This comprehensive compromise and settlement, including the Ponzi
17 Findings, is a critical component of the Plan and is designed to provide a resolution
18 of the innumerable disputed intercompany and intercreditor Claims, Liens, and
19 Causes of Action that otherwise could take years to resolve, which would delay and
20 undoubtedly reduce the Distributions that ultimately would be available for all
21 Creditors.

22 **I. Substantive Consolidation of Debtors.**

23 79. ~~80.~~ On the Effective Date, the Debtors, other than the Excluded Debtors
24 with respect to Claims in Classes 2B and 2C, shall be substantively consolidated
25 pursuant to sections 105(a), 541, 1123, and 1129 of the Bankruptcy Code; *provided,*
26

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1 however, that the Debtors or iCap Trustees, as applicable, reserve the right to
2 effectuate, without further motion practice, substantive consolidation of the Excluded
3 Debtors after the Claims in Classes 2B and 2C are consensually resolved with the
4 Holders of such Claims upon filing notice with the Bankruptcy Court. As a result of
5 the substantive consolidation, on the Effective Date, all property, rights, and claims
6 of the Debtors and all Claims against the Debtors (other than Claims in Classes 2B
7 and 2C) shall be deemed to be pooled for purposes of Distributions under the Plan
8 and, in the iCap Trustees' discretion, other purposes. Further, as a result of this
9 substantive consolidation, all claims between and among the Debtors shall be
10 cancelled. Holders of Allowed Claims shall be entitled to only one satisfaction on
11 account of such Claims, and any contingent or otherwise duplicative Claims against
12 one or more of the Debtors based upon claims for which one or more of the Debtors
13 are also liable shall be disallowed. Holders of Claims in Classes 2B and 2C shall be
14 entitled to recover up to the full amount of their Allowed Secured Claim from the
15 sale proceeds for their Collateral.

16 80. 81. Entry of this Confirmation Order shall constitute the approval,
17 pursuant to sections 105(a), 541, 1123, and 1129 of the Bankruptcy Code, of the
18 substantive consolidation of the Debtors in the manner set forth herein; *provided,*
19 *however*, that while the Debtors shall be substantively consolidated for purposes of
20 Distributions to Creditors, such that all Investors shall have claims against a single
21 pool of the Debtors' consolidated assets, the actual substantive consolidation of
22 entities, particularly for tax purposes, shall be at the option of the Debtors or the iCap
23 Trust, as applicable. Notwithstanding such substantive consolidation, however, fees
24 payable pursuant to 28 U.S.C. § 1930 shall be due and payable by each individual
25 Debtor through the Effective Date.
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1 81. ~~82.~~ Substantive consolidation under the Plan shall not affect, without
2 limitation, any defenses or rights the Debtors or the iCap Trust may have to any
3 Claim, Cause of Action, or Avoidance Action, including the ability to assert a
4 counterclaim.

5 82. ~~83.~~ Any Intercompany Claims that could be asserted by one Debtor
6 against another Debtor will be extinguished immediately before the Effective Date
7 with no separate recovery on account of any such Claims and any Intercompany
8 Liens that could be asserted by one Debtor regarding any Estate Assets owned by
9 another Debtor will be deemed released and discharged on the Effective Date;
10 *provided, however,* that solely with respect to any Secured Claim of a non-debtor as
11 to which the associated Lien would be junior to any Intercompany Lien, the
12 otherwise released Intercompany Claim and associated Intercompany Lien will be
13 preserved for the benefit of, and may be asserted by the iCap Trust as to any
14 Collateral so as to retain the relative priority and seniority of such Intercompany
15 Claim and associated Intercompany Lien.

16 **J. Sources of Cash for Plan Distributions.**

17 83. ~~84.~~ The Debtors shall fund Distributions under the Plan with: (a)
18 Available Cash on hand; (b) the Exit Financing; and (c) all other proceeds, if any,
19 generated from the liquidation of the iCap Trust Actions.

20 **K. Vesting of iCap Trust Assets.**

21 84. ~~85.~~ On the Effective Date, the iCap Trust will be automatically vested
22 with all the Debtors' and the Estates' respective rights, title, and interest in and to all
23 iCap Trust Assets. Except as specifically provided in the Plan or this Confirmation
24 Order, the iCap Trust Assets shall automatically vest in the iCap Trust free and clear
25 of all Claims, Liens, or interests subject only to the iCap Trust Interests and the iCap
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1 Trust Expenses, as provided for in the iCap Trust Agreement, and such vesting shall
2 be exempt from any stamp, real estate transfer, other transfer, mortgage reporting,
3 sales, use, or other similar tax. The iCap Trustees shall be the exclusive trustee of the
4 iCap Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3),
5 as well as the representative of the Estates appointed pursuant to section 1123(b)(3)
6 of the Bankruptcy Code regarding all iCap Trust Assets. The iCap Trust shall hold
7 and distribute the iCap Trust Assets in accordance with the provisions of the Plan and
8 the iCap Trust Agreement.

9 85. 86. Notwithstanding the foregoing or any other provision in the Plan, in
10 the event that the iCap Trust receives any monies from the United States or any other
11 Governmental Unit, obtained as forfeited assets (or otherwise) by the Governmental
12 Unit for the benefit of the Investor victims of the Debtors' prepetition Ponzi scheme,
13 all such monies shall not constitute Estate Assets or iCap Trust Assets, and the iCap
14 Trustees are authorized to and shall distribute all such monies only to Investors who
15 are Holders of Class A iCap Trust Interests or Class B iCap Trust Interests on
16 account thereof, subject to the Plan and the iCap Trust Agreement; *provided* that the
17 iCap Trustees and their agents will be reimbursed from such monies for reasonable
18 costs and expenses incurred by said parties related to the iCap Trust's collection,
19 administration, and distribution of such monies to the applicable Investors.

20 86. 87. Except as otherwise provided in the Plan or this Confirmation Order,
21 the iCap Trust, as a successor in interest to the Debtors, the Estates, and the
22 Contributing Claimants will have the exclusive right, power, and interest on behalf of
23 itself, the Debtors, the Estates, and the Contributing Claimants to institute,
24 commence, file, pursue, prosecute, enforce, abandon, settle, compromise, release,
25 waive, dismiss, or withdraw any and all iCap Trust Actions without any further order
26

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1 of the Bankruptcy Court, except as otherwise provided in the iCap Trust Agreement.
2 From and after the Effective Date, the iCap Trust, in accordance with section
3 1123(b)(3) of the Bankruptcy Code, shall serve as a representative of the Estates with
4 respect to any and all iCap Trust Actions that were Estate Assets and shall retain and
5 possess the right to institute, commence, file, pursue, prosecute, enforce, abandon,
6 settle, compromise, release, waive, dismiss, or withdraw, as appropriate, any and all
7 iCap Trust Actions in any court or other tribunal.

8 87. 88. No person may rely on the absence of a specific reference in the Plan
9 or the Disclosure Statement to any Avoidance Action, Causes of Action, or
10 Contributed Claims against them as any indication that the iCap Trust will not pursue
11 any and all available Avoidance Actions, Causes of Action, or Contributed Claims
12 against such Person. The Debtors and the iCap Trust expressly reserve all rights to
13 prosecute any and all Avoidance Actions, Causes of Action, or Contributed Claims
14 against any Person other than the Released Parties, in accordance with the Plan.

15 88. 89. Notwithstanding anything to the contrary in the Plan, the transfer of
16 the iCap Trust Assets in Article V of the Plan shall not be free and clear of the
17 Supplemental DIP Claims, the Obligations (as defined in the Supplemental DIP
18 Credit Agreement), or the liens, claims, and interests granted to the DIP Parties by
19 the Debtors pursuant to the Supplemental DIP Credit Agreement. The iCap Trust
20 assumes and remains bound by the Supplemental DIP Credit Agreement and all
21 Obligations (as defined in the Supplemental DIP Credit Agreement) thereunder and
22 the Bankruptcy Court's order approving the Supplemental DIP Credit Agreement.
23 The iCap Trust Assets shall be encumbered by the liens, claims, obligations, and
24 security interests granted to the DIP Parties under the Supplemental DIP Credit
25 Agreement and the Bankruptcy Court's order approving the Supplemental DIP Credit
26

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1 Agreement, and the Trust shall not distribute collateral (or proceeds thereof) of the
2 DIP Parties until the Obligations (as defined in the Supplemental DIP Credit
3 Agreement) under the Supplemental DIP Credit Agreement are satisfied in full.
4

5 **L. Abandonment of Certain Estate Assets.**

6 89. ~~90.~~ On the Effective Date, and without the need for further action, the
7 following Estate Assets shall be abandoned by the Debtors and their Estates pursuant
8 to Bankruptcy Code section 554 and shall not be considered iCap Trust Assets: (i)
9 the real property commonly known as 715–775 Broadway, Tacoma, WA; and (ii) the
10 Debtors' interests in Airlink Holdings, LLC's ("Holdings") and Airlink Markets,
11 LLC ("Markets" and, together with Holdings, "Airlink") (which entities shall be
12 dissolved by the Debtors in accordance with this Confirmation Order) including,
13 without limitation, Holdings' membership interests in Markets (the "Airlink
Membership Interests").

14 90. ~~91.~~ Upon the Effective Date, any of the Debtors' remaining interests in
15 Airlink including, without limitation, the Airlink Membership Interests, shall be
16 abandoned. In addition, the Debtors and/or the iCap Trustees, as applicable, are
17 authorized to shut down Airlink, notify all regulators, and file any applications or
18 documents to effectuate such abandonment and shutdown.

19 **M. Termination of Directors and Officers.**

20 91. ~~92.~~ On the Effective Date, each of the Debtors' existing directors and
21 officers including, without limitation, the CRO, shall be terminated automatically
22 without the need for any further action and without the need for any corporate or
23 limited liability company filings, and they shall have no ongoing rights against or
24 obligations to the Debtors or the Estates, including under any applicable prepetition
25 agreements (all of which will be deemed terminated); *provided, however,* that the
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1 Debtors' indemnification and defense obligations under any such agreements shall
2 survive the foregoing termination and remain unaltered by the Plan. On the Effective
3 Date, the iCap Trustees shall succeed to all such powers as would have been
4 applicable to the Debtors' officers and directors in respect of all iCap Trust Assets.
5

6 **N. Appointment of iCap Trustees.**

7 92. 93.—The appointment of Lance Miller and Seth Freeman as the iCap
8 Trustees to perform the functions of the iCap Trustees as set forth in Article V.D of
9 the Plan and the iCap Trust Agreement is hereby approved. The iCap Trustees shall
10 have the rights, powers, and obligations set forth in, and shall be entitled to
11 reimbursement of their costs and expenses incurred in connection with exercising
12 their functions under, the Plan in accordance with Article V.D of the Plan and the
13 iCap Trust Agreement.

14 **O. Corporate Action.**

15 93. 94.—On the Effective Date, all matters under the Plan involving or
16 requiring action of the directors, members, managers, or officers of the Debtors,
17 including, but not limited to, actions requiring a vote or other approval of the board
18 of directors or any of the members or officers of the Debtors or the execution of any
19 documentation incident to or in furtherance of the Plan, shall be deemed to have been
20 authorized by this Confirmation Order and to have occurred and be in effect from
21 and after the Effective Date, without any further action by the Bankruptcy Court or
22 the directors, members, managers, or officers of the Debtors.

23 94. 95.—Without limiting the generality of the foregoing, on the Effective
24 Date and automatically and without further action, (a) any existing director, manager,
25 or officer of the Debtors will be deemed to have resigned on the Effective Date
26 without any further corporate action, (b) the iCap Trustees shall be deemed the

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1 manager, officer, and representative of the iCap Trust to exercise the rights, power,
2 and authority of the iCap Trust under applicable provisions of the Plan and
3 bankruptcy and non-bankruptcy law, and (c) all matters provided under the Plan shall
4 be deemed to be authorized and approved without further approval from the
5 Bankruptcy Court. This Confirmation Order modifies the Debtors' constituent
6 documents such that the provisions of the Plan can be effectuated. The Plan shall be
7 administered by the iCap Trustees, and all actions taken thereunder in the name of
8 the iCap Trust shall be taken through the iCap Trustees. All corporate governance
9 activities of the iCap Trust shall be exercised by the iCap Trustees in their discretion,
10 subject to the terms of the Plan.

11 **P. Closing of the Chapter 11 Cases.**

12 95. ~~96.~~ As soon as practicable after the iCap Trustees exhaust substantially
13 all of the iCap Trust Assets by making the final Distributions under the Plan, the
14 iCap Trustees shall, at the expense of the iCap Trust, (a) abandon, destroy, or
15 otherwise dispose of any books and records of the Debtors that the iCap Trustees
16 deem not necessary for the continued administration of the Plan or required to be
17 retained under applicable law (as determined by the iCap Trustees in good faith),
18 without the need for any order of the Bankruptcy Court, *provided, however,* that such
19 right shall be limited in accordance with paragraph 12897 of this Confirmation
20 Order, (b) file a motion for entry of a final decree closing the Chapter 11 Cases that
21 have not been already closed in accordance with the Bankruptcy Code and the
22 Bankruptcy Rules and stating that the assets of the iCap Trust have been exhausted
23 and final Distributions have been made under the Plan, (c) file the necessary
24 paperwork in the respective jurisdictions to effectuate the dissolution of the Debtors
25 in accordance with the laws of such jurisdiction, and (d) resign as the officer,
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1 director, and manager, as applicable, of the Debtors. Upon the Bankruptcy Court's
2 entry of a Final Order granting the motion described in clause (b) of the preceding
3 sentence, the Debtors shall be deemed dissolved for all purposes without the
4 necessity for any other or further actions to be taken by or on behalf of the Debtors or
5 payments to be made in connection therewith, and the remaining Chapter 11 Cases
6 shall be closed on the date that the Bankruptcy Court has entered such Final Order.

7 96. 97. Notwithstanding the immediately preceding paragraph, if the iCap
8 Trustees deem it appropriate, the iCap Trustees may seek authority from the
9 Bankruptcy Court to close any of the Chapter 11 Cases and dissolve or merge any of
10 the Debtors prior to all final Distributions having been made under the Plan.

11 **Q. Books and Records.**

12 97. On the Effective Date, the Debtors' books and records shall be
13 transferred to the iCap Trustees. The iCap Trustees shall be free, in their discretion to
14 abandon, destroy, or otherwise dispose of the books and records in compliance with
15 applicable non-bankruptcy law, or any other order of the Bankruptcy Court, at any
16 time on and after the Effective Date, without the need for any other or further order;
17 provided, however, that neither the Debtors nor the iCap Trustees shall destroy or
18 otherwise abandon any books, records, electronically stored information, or other
19 documents without providing advance notice to the SEC (c/o William M. Uptegrove,
20 U.S. Securities and Exchange Commission, 950 East Paces Ferry Road, NE, Suite
21 900, Atlanta, GA 30326, UptegroveW@SEC.GOV), which shall have seven (7) days
22 to object to any proposed destruction or abandonment, and with authorization from
23 the Bankruptcy Court; provided further that, nothing in the Plan or this Confirmation
24 Order shall affect the obligations of the Debtors, the iCap Trust, and/or any transferee
25 or custodian to maintain any books and records that are subject to any governmental
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1 subpoena, document preservation letter, or other investigative request from a
2 governmental agency.

3 **R. Q.-Dissolution of the Debtors.**

4 98. Upon the Distribution of all iCap Trust Assets, the Debtors shall be
5 dissolved for all purposes by the iCap Trustees without the necessity for any other or
6 further actions to be taken by or on behalf of any Debtors or payments to be made in
7 connection therewith; *provided, however,* that, without the need of any further
8 approval, the iCap Trustees in their discretion may execute and file documents and
9 take all other actions as they deem appropriate relating to the dissolution of the
10 Debtors under applicable law, and in such event, all applicable regulatory or
11 governmental agencies shall take all steps necessary to allow and effect the prompt
12 dissolution of the Debtors as provided herein, without the payment of any fee, tax, or
13 charge and without need for the filing of any certificates.

14 **S. R.-Cancellation of Indebtedness.**

15 99. Except as otherwise provided in the Plan, on the Effective Date, except
16 for the purpose of evidencing a right to distribution under the Plan, any Notes or
17 other instruments or documents evidencing or creating any indebtedness or
18 obligations of, or interest in, the Debtors, except assumed executory contracts and
19 assumed unexpired leases, and/or such Notes or other instruments evidencing
20 indebtedness or obligations of the Debtors that are unimpaired, reinstated, assumed,
21 or amended and restated under the Plan, shall be cancelled and terminated and of no
22 further force or effect.

23 **T. S.-Exit Financing.**

24 100. The Debtors or the iCap Trust, as applicable, are hereby authorized to
25 enter into, execute, deliver, file, record, and issue the Exit Financing Documents and
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1 to incur the obligations under the Exit Financing, including the granting of liens
2 thereunder, the payment of all fees, expenses, indemnities, and other amounts
3 provided for in each Exit Financing and the other instruments, agreements, and
4 documents entered into in connection therewith, all of which are hereby approved.
5 The Debtors or the iCap Trust, as applicable, are authorized and empowered to incur
6 and to perform their obligations in accordance with, and subject to, the Exit
7 Financing Documents and to perform all acts, and make, execute, and deliver all
8 instruments and documents that may be required for the performance by the Debtors
9 or the iCap Trust, as applicable, under the Exit Financing Documents and the
10 creation and perfection of the liens described in and provided for by the Exit
11 Financing Documents.

12 101. Upon the Effective Date, the Exit Financing Documents shall constitute
13 legal, valid, binding, and authorized debt obligations of each of the Debtors or the
14 iCap Trust, as applicable, and the terms and provisions set forth in the Exit Financing
15 Documents shall be enforceable in accordance with their terms. The financial
16 accommodations to be extended pursuant to the Exit Financing Documents shall be
17 deemed to have been extended in good faith, for legitimate business purposes, are
18 reasonable, and are for reasonably equivalent value as an inducement to the lenders
19 thereunder to extend credit thereunder.

20 102. On the Effective Date, all of the liens and security interests to be granted
21 in accordance with the Exit Financing Documents (a) shall be deemed to be granted,
22 (b) shall be legal, binding, and enforceable liens on, and security interests in, the
23 applicable collateral granted thereunder in accordance with the terms of the Exit
24 Financing Documents, (c) shall be deemed automatically perfected and
25 non-avoidable on the Effective Date, subject only to such liens and security interests

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1 as may be permitted under the Exit Financing Documents, (d) shall not be subject to
2 avoidance, recharacterization, or equitable subordination for any purposes
3 whatsoever, and (e) shall not constitute preferential transfers, fraudulent transfers, or
4 fraudulent conveyances under the Bankruptcy Code or any applicable
5 non-bankruptcy law.

6 **U. T. Effectuating Documents; Further Transactions.**

7 103. On and after the Effective Date, the iCap Trustees are authorized to, and
8 may issue, execute, deliver, file, or record, such contracts, instruments, releases, and
9 other agreements or documents and take such actions as may be necessary or
10 appropriate to effectuate, implement, and further evidence the terms and conditions
11 of the Plan, without the need for any approvals, authorization, or consents, except for
12 those expressly required pursuant to the Plan.

13 104. Issuance of the iCap Trust Interests in accordance with the Plan is
14 approved. The iCap Trust is authorized and empowered, without further approval of
15 this Bankruptcy Court or any other Person, to take such actions and to perform such
16 acts as may be necessary, desirable, or appropriate to implement the issuance of the
17 iCap Trust Interests in accordance with the Plan and to execute and deliver all
18 agreements, documents, securities, instruments, and certificate relating thereto.

19 105. The approvals and authorizations specifically set forth in this
20 Confirmation Order are not intended to limit the authority of the Debtors or the iCap
21 Trustees, as applicable, to take any and all actions necessary or appropriate to
22 implement, effectuate, and consummate any and all document or transactions
23 contemplated by the Plan or this Confirmation Order.

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1 **V. U. Section 1146 Exemption.**

2 106. In accordance with section 1146 of the Bankruptcy Code and
3 Washington Administrative Code 458-61A-207, no stamp tax, conveyance fee, real
4 estate, excise, or other transfer tax, mortgage tax, mortgage recording tax, Uniform
5 Commercial Code filing or recording filing fee, or similar tax shall apply to (a) the
6 sale or transfer of iCap Trust Assets to the iCap Trust; (b) the issuance, Distribution,
7 transfer, or exchange of Notes or equity securities under the Plan; (c) the
8 establishment of any mortgage, deed of trust, Lien, pledge, or other security interest,
9 or the execution or delivery of any lease, sublease, deed, or other transfer instrument
10 related to or in support of the Plan; or (d) the sale of any real estate by the iCap Trust.
11 Upon entry of this Confirmation Order, the appropriate state or local governmental
12 officials or agents and any third party shall forgo the collection of any such tax,
13 recordation fee, or governmental assessment and accept for filing and recordation
14 any of the foregoing instruments or other documents without the payment of any
15 such tax, recordation fee, or assessment.

16 **W. V. Preservation of Rights of Action.**

17 107. Except as otherwise provided in the Plan or this Confirmation Order
18 (including in the Investor Claims Special Provisions), in accordance with section
19 1123(b) of the Bankruptcy Code, from and after the Effective Date, the iCap Trust
20 will retain all rights to institute, commence, file, pursue, prosecute, enforce, abandon,
21 settle, compromise, release, waive, dismiss, or withdraw, as appropriate, any and all
22 of the Debtors' or Estates' Causes of Action and Causes of Action that are
23 Contributed Claims (whether existing as of the Petition Date or thereafter arising),
24 and all Avoidance Actions, all as iCap Trust Actions, in each case in any court or
25 other tribunal, including in an adversary proceeding Filed in the Chapter 11 Cases,
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1 subject to the requirements set forth in the Plan and the iCap Trust Agreement. The
2 iCap Trust shall have the exclusive right, power, and interest on behalf of itself, the
3 Debtors, the Estates, and the Contributing Claimants to, enforce, sue on, settle,
4 compromise, transfer, or assign (or decline to do any of the foregoing) any or all of
5 the iCap Trust Actions without notice to or approval from the Bankruptcy Court,
6 subject to the iCap Trust Agreement. In accordance with the Plan, without any
7 further notice to or action, order, or approval of the Bankruptcy Court, from and after
8 the Effective Date, the iCap Trust may compromise and settle iCap Trust Actions,
9 subject to the iCap Trust Agreement. For the avoidance of doubt, nothing in the
10 Disclosure Statement or the Plan shall require the iCap Trust to commence or pursue
11 litigation concerning any iCap Trust Action.

12 108. The failure to specifically identify in the Disclosure Statement
13 (including its exhibits and schedules) or the Plan any potential or existing Avoidance
14 Actions or Causes of Action as an iCap Trust Action is not intended to and shall not
15 limit the rights of the iCap Trust to pursue any such Avoidance Actions or Causes of
16 Action. Unless a iCap Trust Action is expressly waived, relinquished, released,
17 compromised, or settled in the Plan or any Final Order (including this Confirmation
18 Order), the Debtors expressly reserve such iCap Trust Action for later resolution by
19 the iCap Trust (including any Avoidance Actions or Causes of Action not
20 specifically identified or of which the Debtors may presently be unaware or that may
21 arise or exist by reason of additional facts or circumstances unknown to the Debtors
22 at this time or facts or circumstances that may change or be different from those the
23 Debtors now believe to exist). In addition, the right to pursue or adopt any claims
24 alleged in any lawsuit in which any Debtor or the iCap Trust is a plaintiff, defendant,
25 or an interested party is fully reserved as against any Person that is not a Released
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1 Party, including the plaintiffs or co-defendants in such lawsuits. No preclusion
2 doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion,
3 claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to
4 any iCap Trust Actions upon, after, or as a consequence of the confirmation of the
5 Plan.

6 **X. W.-Releases, Exculpation, and Injunctions.**

7 109. The following release, exculpation, and injunction provisions set forth in
8 Article X of the Plan are hereby approved and authorized in their entirety.

9 110. **Releases and Related Matters. On the Effective Date, for good and**
10 **valuable consideration, the adequacy of which is hereby confirmed, each of the**
11 **Releasing Parties shall be deemed, to the fullest extent permitted under**
12 **applicable law, to have forever released, waived, and discharged each of the**
13 **Released Parties from any and all claims, obligations, suits, judgments, damages,**
14 **demands, debts, rights, Causes of Action, and liabilities whatsoever, whether**
15 **known or unknown, whether foreseen or unforeseen, whether liquidated or**
16 **unliquidated, whether fixed or contingent, whether matured or unmatured,**
17 **existing or hereafter arising, at law, in equity, or otherwise, that are based in**
18 **whole or in part on any act, omission, transaction, event, or other occurrence**
19 **taking place on or prior to the Effective Date in any way relating to the Debtors,**
20 **the Estates, the conduct of the Debtors' businesses, the Chapter 11 Cases, or the**
21 **Plan, except for acts or omissions that are determined by Final Order to have**
22 **constituted actual fraud or willful misconduct; provided, however, that nothing**
23 **in Article X.G of the Plan shall release or otherwise affect any Person's rights**
24 **under the Plan or the Confirmation Order.**

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1 111. Entry of the Confirmation Order shall constitute (i) the Bankruptcy
2 Court's approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in
3 Article X.G of the Plan; and (ii) the Bankruptcy Court's findings that such
4 releases are (1) in exchange for good and valuable consideration provided by the
5 Released Parties (including performance of the terms of the Plan), and a
6 good-faith settlement and compromise of the released claims, (2) in the best
7 interests of the Debtors, the Estates, and any Holders of Claims that are
8 Releasing Parties, (3) fair, equitable, and reasonable, (4) given and made after
9 due notice and opportunity for hearing, and (5) a bar to any of the Releasing
10 Parties asserting any released claim against any of the Released Parties.

11 112. For the avoidance of doubt, the Release does not apply to Christopher
12 Christensen and/or Jim Christensen. The Released Parties shall not include any
13 prepetition insider of any of the Debtors, any non-debtor affiliates of the Debtors or
14 insider of any such non-debtor affiliates, any prepetition employee of any of the
15 Debtors involved in any way in the prepetition marketing or sale of any products
16 offered by any of the Debtors, and any other Person (including any "broker,"
17 salesperson, consultant, affiliated entity, or professional) involved in any way in the
18 prepetition marketing or sale of any products offered by any of the Debtors (the
19 "Excluded Parties"). Excluded Parties shall not include any consultant retained or
20 engaged by the Debtors during the Chapter 11 Cases except for Christopher
21 Christensen and Jim Christensen.

22 113. Exculpation. On the Effective Date, for good and valuable
23 consideration, the adequacy of which is hereby confirmed, to the maximum
24 extent permitted by law, none of the Exculpated Parties shall have or incur any
25 liability to any Person, including to any Holder of a Claim or an Equity Interest,
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1 for any postpetition act or omission occurring from the Petition Date to the
2 Effective Date in connection with, relating to, or arising out of the Chapter 11
3 Cases, the formulation, negotiation, preparation, dissemination, solicitation of
4 acceptances, implementation, Confirmation, or consummation of the Plan, the
5 Disclosure Statement, or any contract, instrument, release, or other agreement
6 or document created, executed, or contemplated in connection with the Plan, or
7 the administration of the Plan or the property to be distributed under the Plan,
8 or any other act taken or omission originating or occurring after the Petition
9 Date but before the Effective Date in connection with or in contemplation of the
10 restructuring, sale, or liquidation of the Debtors; *provided, however,* that nothing
11 in Article X.H of the Plan shall release or otherwise affect any Person's rights
12 under the Plan or the Confirmation Order, including with respect to the
13 Supplemental DIP Credit Agreement; and *provided, further,* that the exculpation
14 provisions of Article X.H of the Plan shall not apply to acts or omissions
15 constituting actual fraud, willful misconduct, gross negligence, or malpractice by
16 such Exculpated Party as determined by a Final Order. This exculpation shall
17 be in addition to, and not in limitation of, all other releases, indemnities,
18 exculpations, and any other applicable law or rules protecting the Exculpated
19 Parties from liability. This Confirmation Order shall serve as a permanent
20 injunction against any Person seeking to enforce any Causes of Action against
21 the Exculpated Parties that are encompassed by the exculpation provided by
22 Article X.H of the Plan.

23 114. **Injunction.** Except as otherwise expressly provided in the Plan, and
24 except in connection with the enforcement of the Plan or any documents
25 provided for or contemplated in the Plan, all Persons who have held, hold, or
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1 may hold Claims against or Equity Interests in the Debtors or the Estates that (i)
2 have been released pursuant to Article X.G of the Plan or (ii) are subject to
3 exculpation pursuant to Article X.H of the Plan, are permanently enjoined from
4 and after the Effective Date from: (a) commencing or continuing in any manner,
5 directly or indirectly, any action or other proceeding of any kind against the
6 Debtors, the Estates, or their successors and assignees, or any of their assets and
7 property, with respect to any such Claim or Equity Interest; (b) the
8 enforcement, attachment, collection, or recovery by any manner or means,
9 directly or indirectly, of any judgment, award, decree, or order against the
10 Debtors, the Estates, or their successors and assignees, or any of their assets and
11 property, with respect to any such Claim or Equity Interest; (c) creating,
12 perfecting, or enforcing, directly or indirectly, any Lien or encumbrance of any
13 kind against the Debtors, the Estates, or their successors and assignees, or any of
14 their assets and property, with respect to any such Claim or Equity Interest; (d)
15 asserting, directly or indirectly, any setoff, or recoupment of any kind against
16 any obligation due to the Debtors, the Estates, or their successors and assignees,
17 or any of their assets and property, with respect to any such Claim or Equity
18 Interest, unless approved by the Bankruptcy Court; and (e) any act, in any
19 manner, in any place whatsoever, that does not conform to or comply with the
20 provisions of the Plan with respect to such Claim or Equity Interest. Without
21 limiting the foregoing, the automatic stay provided under section 362(a) of the
22 Bankruptcy Code shall remain in effect until the Chapter 11 Cases are closed.
23 Nothing contained in Article X.I of the Plan shall prohibit the Holder of a Filed
24 proof of Claim from litigating its right to seek to have such Claim declared an
25 Allowed Claim and paid in accordance with the distribution provisions of the
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1 Plan, or enjoin or prohibit the interpretation or enforcement by the Holder of
2 such Claim or Equity Interest of any of the obligations of the Debtors or the
3 iCap Trustees under the Plan. The iCap Trust shall be entitled, as liquidated
4 damages, to the payment of any fees and costs incurred by the iCap Trust to
5 address any violation of the injunction contained in Article X.I of the Plan.

6 115. **Injunction Against Interference with the Plan.** Upon entry of this
7 Confirmation Order, all Holders of Claims and Equity Interests and their
8 respective current and former employees, agents, officers, directors, principals,
9 and direct and indirect affiliates shall be enjoined from taking any actions of
10 any kind against the iCap Trustees, the iCap Trust, or any of the iCap Trust
11 Assets that interfere with the implementation or consummation of the Plan. The
12 iCap Trust shall be entitled, as liquidated damages, to the payment of any fees
13 and costs incurred by the iCap Trust to address any violation of the injunction
14 contained in Article X.J of the Plan.

15 **Y. X. Provisions Governing Distributions.**

16 116. The distribution provisions of Article VI of the Plan shall be, and hereby
17 are, approved in their entirety. The iCap Trustees shall make all Distributions under
18 the Plan to the appropriate Holders of Allowed Claims in accordance with the terms
19 of the Plan and the iCap Trust Agreement, as applicable.

20 **Z. Y. Administration of the iCap Trust.**

21 117. The iCap Trust Agreement, substantially in the form filed with the Plan
22 Supplement, as such Plan Supplement may be amended in accordance with the Plan
23 and this Confirmation Order is approved.

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PORTLAND, OR 97205
TELEPHONE: 503 224-5560

1 **AA. Z.-Post-Confirmation Notices, Professional Compensation, and Bar Dates.**

2 **1. Notice of Entry of the Confirmation Order and Occurrence of the**
3 **Effective Date.**

4 118. In accordance with Bankruptcy Rules 2002 and 3020(c), promptly after
5 the occurrence of the Effective Date, the Debtors shall promptly cause notice of
6 confirmation of the Plan and the occurrence of the Effective Date,~~in substantially the~~
7 ~~form annexed hereto as Exhibit B~~ (the “Notice of Effective Date”), to be served by
8 e-mail or United States first class mail to all parties served with the notice of the
9 Confirmation Hearing; *provided*, that the Debtors are excused from distributing the
10 Notice of Effective Date to those addresses from which one or more prior notices
11 served in these Chapter 11 Cases were returned as undeliverable unless the Debtors
12 are provided with updated addresses for such entities before the Effective Date.
13 Mailing of the Notice of Effective Date in the time and manner set forth in this
14 paragraph will be good, adequate, and sufficient notice under the particular
15 circumstances and in accordance with the requirements of Bankruptcy Rules 2002
16 and 3020(c). No further notice is necessary.

17 119. The Notice of Effective Date will constitute sufficient notice of the entry
18 of this Confirmation Order to filing and recording officers, and will be a recordable
19 instrument notwithstanding any contrary provision of applicable non-bankruptcy law.

20 **2. Final Administrative Claims Bar Date.**

21 120. The provisions governing the treatment of Allowed Administrative
22 Expense Claims set forth in Article III.A.1 of the Plan are approved in their entirety.
23 Administrative expense requests asserting Administrative Expense Claims arising
24 from the Petition Date through and including the Effective Date, excluding (a)
25 Claims of Professional Persons in the Chapter 11 Cases and (b) claims arising in the
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1 ordinary course of business, must be filed no later than thirty (30) days after the
2 notice of the Effective Date is filed with the Bankruptcy Court or such later date as
3 may be established by order of the Bankruptcy Court (the “Administrative Expense
4 Claims Bar Date”). Holders of Administrative Expense Claims who are required to
5 file a request asserting Administrative Expense Claims and who do not file such
6 request by the Administrative Expense Claims Bar Date, may not receive or be
7 entitled to receive any payment or distribution of property from the Debtors or their
8 successors or assigns with respect to such Administrative Expense Claim in the
9 Chapter 11 Cases. Notwithstanding the foregoing, pursuant to section 503(b)(1)(D)
10 of the Bankruptcy Code, no Governmental Unit shall be required to file a request for
11 payment of any Administrative Expense Claim of a type described in sections
12 503(b)(1)(B) or 503(b)(1)(C) of the Bankruptcy Code as a condition to such Claim
13 being Allowed.

14 3. **Professional Fees.**

15 121. The provisions governing compensation or reimbursement of
16 Professional Persons set forth in Article III.A.1.b of the Plan are approved in their
17 entirety. All final requests for compensation or reimbursement of Professional
18 Persons retained in these Chapter 11 Cases for services performed and expenses
19 incurred prior to the Effective Date shall be filed and served on: (a) the iCap
20 Trustees, (i) Pivot Management Group, LLC, 1230 Rosecrans Ave., Suite 530,
21 Manhattan Beach, CA 90266 (Attn: Lance Miller (Lance.miller@pivotgrp.com)) and
22 (ii) B. Riley Advisory Services, 19800 MacArthur Boulevard, Suite 820, Irvine, CA
23 92612 (Attn: Seth Freeman (SFreeman@brileyfin.com)); (b) counsel to the Debtors,
24 O’Melveny & Myers LLP (i) 400 South Hope Street, Suite 1900, Los Angeles, CA
25 90071 (Attn: Julian Gurule (jgurule@omm.com)) and (ii) 1301 Avenue of the
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4. Bar Date for Rejection Damages Claims.

122. Proofs of Claim asserted in connection with any executory contracts or unexpired leases rejected under the Plan must be filed so that they are actually received by BMC no later than thirty (30) days after service of the notice of Effective Date. Any proofs of Claim not filed and served within such time period shall not

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1 receive or be entitled to receive any payment or Distribution from the Debtors or the
2 iCap Trust with respect to such Claim in the Chapter 11 Cases.

3 **5. Notice of Subsequent Pleadings.**

4 123. Except as otherwise may be provided in the Plan or herein, notice of all
5 subsequent pleadings in the Chapter 11 Cases after the Effective Date shall be limited
6 to the following parties: (a) the iCap Trustees (as set forth in the iCap Trust
7 Agreement); (b) the U.S. Trustee; and (c) any Person that files a renewed request for
8 notice under Bankruptcy Rule 2002 after the Effective Date.

9 **BB. AA. Payment of Statutory Fees.**

10 124. The Debtors shall timely make all payments required under the Plan.
11 Without limiting the generality of the foregoing, the iCap Trust shall be responsible
12 for the timely payment of quarterly fees incurred pursuant to 28 U.S.C. § 1930(a)(6)
13 following Confirmation until the Case Closing Date. After Confirmation, the iCap
14 Trust shall serve on the United States Trustee quarterly a financial report for each
15 quarter (or portion thereof) the Chapter 11 Cases remain open. The financial report
16 shall include a statement of all disbursements made during the course of the relevant
17 quarter, whether or not pursuant to the Plan.

18 **CC. BB. Effectiveness of All Actions.**

19 125. All actions authorized to be taken pursuant to the Plan, including,
20 without limitation, entry into the iCap Trust Agreement and the Exit Financing, shall
21 be effective on, prior to, or after the Effective Date pursuant to this Confirmation
22 Order, without further application to, or order of the Bankruptcy Court, or further
23 action by the respective officers, directors, managers, members, or stockholders of
24 the Debtors or the iCap Trustees and with the effect that such actions had been taken
25 by unanimous action of such officers, directors, managers, members, or stockholders.

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SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503 224-5560

1 126. This Confirmation Order shall constitute all approvals and consents
2 required, if any, by the laws, rules, and regulations of all states and any other
3 governmental authority with respect to the implementation or consummation of the
4 Plan and any documents, instruments, or agreements, and any amendments or
5 modifications thereto, and any other acts and transactions referred to in or
6 contemplated by the Plan, the Plan Supplement, the Disclosure Statement, the iCap
7 Trust Agreement, and any other documents, instruments, securities, or agreements,
8 and any amendments or modifications thereto, including with respect to the Exit
9 Financing.

10 **DD. CC. Conflicts.**

11 127. Except as set forth in the Plan, to the extent that any provision of the
12 Plan, the Plan Supplement, or any other document (but excluding, for the avoidance
13 of doubt, this Confirmation Order) referenced in the Plan (or any exhibits, schedules,
14 appendices, supplements, or amendments to any of the foregoing), conflict with or
15 are in any way inconsistent with any provision of the Plan (without reference to the
16 Plan Supplement), the Plan (without reference to the Plan Supplement) shall govern
17 and control; *provided, however,* that notwithstanding anything herein or the Plan to
18 the contrary, in the event of a conflict between this Confirmation Order, on the one
19 hand, and any of the Plan or the Plan Supplement on the other hand, this
20 Confirmation Order shall govern and control in all respects.

21 **EE. DD. SEC Rights.**

22 128. Notwithstanding any language to the contrary in the Disclosure
23 Statement, the Plan, and/or this Confirmation Order, no provision shall (i) preclude
24 the SEC from enforcing its police or regulatory powers or (ii) enjoin, limit, impair, or
25 delay the SEC from commencing or continuing any claims, Causes of Action,
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SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503 224-5560

1 proceedings, or investigations against any non-Debtor Person or non-Debtor entity in
2 any forum.

3 **FF. EE. Reservation of Rights.**

4 129. Except as expressly set forth in the Plan, the Plan shall have no force or
5 effect unless the Bankruptcy Court shall enter this Confirmation Order. None of the
6 filing of the Plan, any statement or provision contained herein, or the taking of any
7 action by any Debtor with respect to the Plan shall be or shall be deemed to be an
8 admission or waiver of any rights of any Debtor with respect to the Holders of
9 Claims or Equity Interest before the Effective Date.

10 **GG. FF. Severability.**

11 130. In the event the Bankruptcy Court determines, before Confirmation, that
12 any provision in the Plan is invalid, void, or unenforceable, the Bankruptcy Court
13 shall have the power to alter and interpret such term or provision to make it valid or
14 enforceable to the maximum extent practicable, consistent with the original purpose
15 of the term or provision held to be invalid, void, or unenforceable, and such term or
16 provision shall then be applicable as altered or interpreted. Notwithstanding any such
17 holding, alteration, or interpretation, the remainder of the terms and provisions of the
18 Plan will remain in full force and effect and will in no way be affected, impaired, or
19 invalidated by such holding, alteration, or interpretation. This Confirmation Order
20 shall constitute a judicial determination and shall provide that each term and
21 provision of the Plan, as it may have been altered or interpreted in accordance with
22 the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the
23 Plan and may not be deleted or modified without consent of the Debtors; and (c)
24 nonseverable and mutually dependent.

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1 **HH. GG. Revocation or Withdrawal of the Plan; Non-Occurrence of Effective**
2 **Date Conditions.**

3 131. The Debtors reserve the right to revoke or withdraw the Plan before
4 Confirmation and to file a subsequent plan. If the Debtors revoke or withdraw the
5 Plan before Confirmation, then the Plan shall be deemed null and void. In such event,
6 nothing contained herein shall constitute or be deemed a waiver or release of any
7 claims by or against the Debtors or to prejudice in any manner the rights of the
8 Debtors in any further proceedings involving the Debtors.

9 132. If the conditions necessary for the Effective Date are not met or duly
10 waived as outlined in Articles IX.A and B of the Plan, upon notification filed by the
11 Debtors with the Bankruptcy Court, the following shall occur: (i) this Confirmation
12 Order will be vacated; (ii) no Distributions will be made; (iii) the Debtors, the
13 Estates, the Committee, and all Creditors will revert to the status quo as of the day
14 immediately preceding the Confirmation Hearing as if the Confirmation Order had
15 not been entered; and (iv) all obligations of the Debtors and the Estates regarding
16 Claims will remain unchanged. Nothing in the Plan will constitute a waiver or release
17 of any Claims by or against the Debtors, the Estates, or any other Person, nor will it
18 prejudice the rights, claims, or defenses of the Debtors, the Estates, or any other
19 Person.

20 **II. III. Retention of Jurisdiction.**

21 133. Pursuant to sections 105(c) and 1142 of the Bankruptcy Code, and
22 notwithstanding entry of this Confirmation Order and the occurrence of the Effective
23 Date, the Bankruptcy Court retains jurisdiction and power over all matters arising in,
24 arising under, or related to the Chapter 11 Cases and the Plan to the fullest extent
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SUITE 1900
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1 permitted by law, including the jurisdiction and power related to those matters set
2 forth in Article XIII of the Plan.

3 **JJ. H.-Dissolution of Committee.**

4 134. Upon the occurrence of the Effective Date, the Committee shall dissolve
5 automatically, whereupon its members, professionals, and agents shall be released
6 from any duties and responsibilities in the Chapter 11 Cases and under the
7 Bankruptcy Code (except with respect to (a) obligations arising under confidentiality
8 agreements, which shall remain in full force and effect, (b) applications for
9 allowance and payment of the fees of Professional Persons, and (c) any pending
10 motions or other actions seeking enforcement or implementation of the provisions of
11 the Plan).

12 **KK. JJ.-Final Order.**

13 135. This Confirmation Order is a Final Order and the period in which an
14 appeal must be filed shall commence upon entry hereof.

15 **LL. KK.-Enforceability of Plan.**

16 136. Pursuant to sections 1123(a), 1141(a), and 1142 of the Bankruptcy
17 Code, the Plan and all Plan-related documents shall be, and hereby are, valid,
18 binding, and enforceable. Upon the occurrence of the Effective Date, the Plan and the
19 Plan Supplement shall be immediately effective and enforceable and deemed binding
20 on the Debtors, all Creditors and Holders of Equity Interests, and all other Persons in
21 accordance with their respective terms.

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1 **MM. LL. Substantial Consummation.**

2 137. “Substantial Consummation” of the Plan, as defined in section 1101(2)
3 of the Bankruptcy Code, shall be deemed to occur on the Effective Date.

4 **NN. MM. Immediate Binding Effect.**

5 138. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or
6 otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be
7 immediately effective and enforceable and deemed binding upon the Debtors, and
8 any and all Holders of Claims or Equity Interests (irrespective of whether such
9 Claims or Equity Interests are deemed to have accepted the Plan), all Persons and
10 Entities that are party, or subject, to the settlements, compromises, releases, and
11 injunctions described in the Plan, each Person and Entity acquiring property under
12 the Plan, and the respective heirs, executors, administrators, successors or assigns,
13 affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, or
14 guardians, if any, with respect to the foregoing.

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16 ///End of Order///

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BLACK HELTERLINE LLP
805 SW BROADWAY
SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503 224-5560

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2 PRESENTED BY:
3
4

5 By: /s/
6 OREN B. HAKER (WSBA No. 48725)
7 BRITTA E. WARREN, WSBA No. 43329
8 BLACK HELTERLINE LLP

9 *Co-Counsel to Debtors and Debtors in Possession*

10 By: /s/
11 JULIAN I. GURULE (Admitted *Pro Hac Vice*)
12 O'MELVENY & MYERS, LLP

13 *Co-Counsel to Debtors and Debtors in Possession*

14 By: /s/
15 ARMAND J. KORNFELD, WSBA No. 17214
16 AIMEE S. WILLIG, WSBA No. 22859
17 JASON WAX, WSBA No. 41944
18 BUSH KORNFELD LLP

19 *Counsel for the Official Committee of
20 Unsecured Creditors*

21 And

22 JOHN T. BENDER, WSBA No. 49658
23 K&L ~~Gates~~GATES LLP

24 *Special Litigation Counsel for the Official
25 Committee of Unsecured Creditors*

26
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BLACK HELTERLINE LLP
805 SW BROADWAY
SUITE 1900
PORTLAND, OR 97205
TELEPHONE: 503 224-5560

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Delete	104
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Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	215